

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

77-1136

77-1173

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

against

BRUCE KAY,

Appellee,

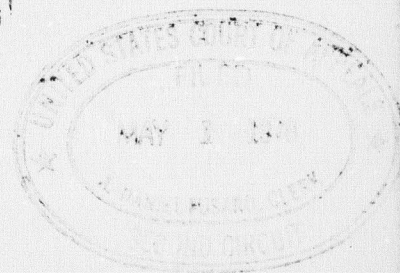
Appellant.

ON APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLANT BRUCE KAY

JOSEPH W. RYAN, JR.
Attorney for Appellant
114 Old Country Road
Mineola, N. Y. 11501
(516) 248-6411

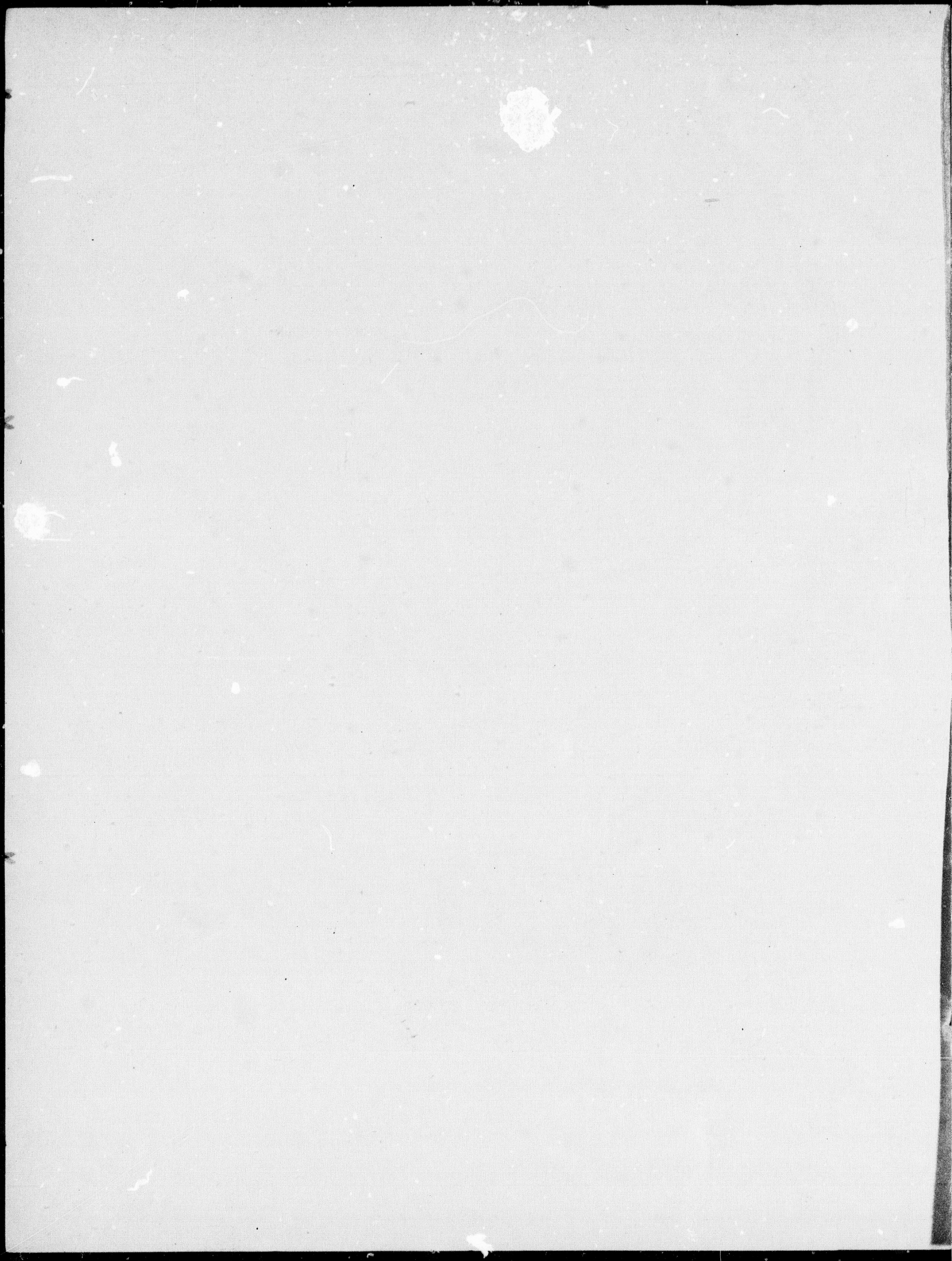
PAUL V. FRENCH
United States Attorney
Northern District of New York
Attorney for Appellee
U.S. Courthouse & Post Office
Albany, New York 11201
(518) 472-5522



PAGINATION AS IN ORIGINAL COPY

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Docket Entries.

U.S. Attorney or Asst. William J. Dreyer, Asst.		Defense: ☐ CJA, ☐ Ret; ☐ Waived, ☐ Self, ☐ None, ☐ Other, ☐ PO, ☐ CD Peter F. Langrock 5/29-Jos. W. Ryan, Jr., 114 Old Country Rd, Mineola		AMT- Conditional Release Set (000) ☐ 10% Depo \$ ☐ Surety Bo date ☐ Collateral ☐ Bail Not Made ☐ 3rd Party ☐ Bail Status Changed ☐ Custody (See Docket) ☐ PSA	
ARREST	INDICTMENT ☒	ARRAIGNMENT ☒	TRIAL	SENTENCE	
2/18 or U.S. Custody Began on Above Charges	☐ High Risk Defn. & Date Design'd 2/4/76 ☐ Waived ☐ Superseding ☐ Indict/Info	3/15 1st Plea Final Plea	Trial Set For 12/1/76 ☒ Not Guilty ☐ Nolo ☐ Guilty ☐ Not Guilty ☐ Nolo ☐ Guilty	Voir Dire ☒ 12/1/76 Trial Began ☐ J 12/1/76 ☐ N Trial Ended	Disposition 2/22/76 ☐ Convicted ☐ On All Charge ☐ Acquitted ☐ On Lesser Offense(s) ☐ Dismissed: ☐ WOP; ☐ V/P ☐ Noll'd/Discontinued*
☐ Prosecution Deferred					

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		☐ Dismissed ☐ Held for District GJ ☐ Held to Answer to U. S. District Court AT: Magistrate's Initials
Summons	Issued			☐ Waived ☐ Not Waived ☐ Intervening Indictment		
	Served					
Arrest Warrant						
COMPLAINT						
OFFENSE (In Complaint)						

Show last names and suffix numbers of other defendants on same indictment/information		V. Excludable Delay			
DATE	PROCEEDINGS	(a)	(b)	(c)	(d)
1976					
2/4/76	Filed Indictment. Bench Warrant to any U. S. Marshal, etc., is ordered on motion of Wm. J. Dreyer, AUSA. Bail fixed at \$2,500. Govt. moves that Indictment be sealed. So ordered.				
Feb. 20	Filed letter ordering Indictment unsealed				
Feb. 24	Filed U. S. Attorney's letter approved by Judge Foley modifying bail.				
Mar. 4	Filed executed Warrant for Arrest= Feb. 18 Burlington, Vt.				
Mar. 15	The deft. is arraigned and pleads not guilty. Thirty days to file motions. Personal surety bond of \$2,500 is substituted for same cash bail.				
Apr. 14	Filed Order signed by Judge Foley, modifying appearance bond, and authorizing Clerk to return \$2500 to surety, deft. Bruce Kay.				
May 5	Ready				
May 26	Filed Notice of Appearance, Attorney Joseph W. Ryan, Jr.,				
Oct. 3/76	Filed Motion for continuance returnable 9/13/76				
Oct. 13	Motion for continuance - granted				
Oct. 16	Filed Order of Judge Port granting continuance in the interest of Justice from 9/3/76 to the first day of trial in Nov. in Albany				

POSITIVE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h) - "SPEEDY TRIAL ACT".

POSITIVE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h) - "SPEEDY TRIAL ACT".

IV. PROCEEDINGS (continued)		(a)	(b)
12/30/76	Filed Memorandum of Points & Authorities and Voir Dire Examination.		
12/ 1/76	Trial. Jury panel absent from courtroom. Deft's. move for an application for presentence reports of other defendants who have previously pled. Decision reserved. The deft.'s move for an application for inspection of Grand Jury minutes in re a witness. Decision reserved. The Gov't. moves for the dismissal of Counts 2 thru 10 of the Indictment-granted. Jury drawn and sworn. 2 alternates drawn and sworn.		
12/2/76	Filed Order for Writ of Habeas Corpus ad Testificandum to bring Paul Moskowitz to Albany, 12/2/76. Writ issued.		
12/2/76	Trial Continued. Witness Robert Roth called.		
12/3/76	Trial continued. Jury absent from Courtroom, Mr. Ryan moves for application to inspect presentence reports of defts. who will be called as witnesses - denied. Defts. renew application for inspection of Grand Jury testimony of Margaret Buecher-decision reserved. Trial continued.		
12/7/76	Trial continued.		
12/9/76	Trial continued.		
12/10/76	Trial continued.		
12/14/76	Trial continued. In chambers Mr. Ryan moves for service of subpoena on behalf of deft. Kay upon Albany County probation dept., etc.-application denied. Jury absent defense moves for an application for a suppression hearing in re: search & seizure-denied. Defense moves for severance in re defts. Kay and Lefebvre, or, if denied, for a mistrial - both denied.		
12/15/76	Filed ex. Writ of Habeas Corpus for Paul Moskowitz		
12/15/76	Trial continued		
12/16/76	" "		
12/20/76	Trial continued. Plaintiff filed 2 requests to charge, Deft. file 8 requests to charge. Judge Foley reserves decision at this time for requests Nos. 4 and 6.		
12/21/76	Judge Foley rules on request to charge No. 4- certain paragraphs refused as too detailed. Remainder will be charged. Charge No. 6 -refused. Attys. sum up.		
12/22/76	Trial continued- Judge Foley charges Jury. Court exhibits 3,4,5,6,7,9 filed. Jury comes into Courtroom, find each deft. guilty. Jury polled, unanimous verdict is rendered by each juror in re each deft. Notes of Juror # 1, Mr. Chow, directed by the court to be filed as Court exhibit #10. Mr. Dreyer moves to defer sent. for review of pre-sentence investigation. Mr. Ryan, Lombardino, Lebetkin and Leone move to set aside verdict for reasons states-denied.		
12/14/76	Filed sealed envelope signed by Judge Foley 12/14/76		
12/22/76	Filed sealed Court Exhibit.		
1/3/77	Filed Copy of Letter to Judge Foley from Attorneys for defendants re: Extension of Time for Motions to set aside Verdict.		

DISTRICT COURT

KAY, U.S. vs

KAY, BRUCE

76 12

Yr.

Docket No

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE	
		(a)	(b)
<u>1977</u>			
Jan. 5	Filed Notice of Motion returnable January 17, 1977 at 10:00 A.M. in Albany.		
Jan. 5	Filed Memorandum of Law of Defendants in support of their motion pursuant to Rule 33 of the Federal Rules of Criminal Procedure to set aside the verdict of the jury against them and for a new trial and for a full evidentiary hearing.		
Jan. 7	Filed Notice of Motion returnable Jan. 17, 1977 for an Order granting a new trial.		
Jan. 7	Filed defendant's Memorandum in support of motion for a new trial.		
Jan. 13	Filed executed Writ.		
Jan. 17	Motion for an order granting a new trial=adjourned without date.		
Jan. 24	Filed transcript of proceedings held 12/2/76 and transcript of proceedings held 12/22/76.		
Jan. 26	Motion for an order granting a new trial by deft. Kay-decision reserved.		
Feb. 15	Filed Memo-Decision & Order of Judge Foley denying motions for new trial.		
Feb. 22	The Court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. The defendant is sentenced to the custody of the Attorney General for a period of six months with a special parole term of two years on Count one. Execution of sentence is stayed pending filing Notice of Appeal. Bail continued pending appeal.		
Feb. 23	Filed Judgment signed by Judge Kley on Feb. 23, 1977.		
March 2	Filed Notice of Appeal.		
April 7	Filed copy of scheduling order for appeal.		

4a
Judgment of Conviction.

United States of America vs. **United States District Court for**
BRUCE KAY Northern District of New York
DEFENDANT
DOCKET NO. 76-CR-12

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
Feb.	22	1977

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL Joseph W. Ryan, Jr.
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of wilfully, knowingly and unlawfully combining, conspiring, confederating and agreeing, together and with each other, to commit an offense against the United States, to wit: to violate 21 USC §841(a)(1), from about July 1972 through June 1975, at or near Albany, N.Y.; that the object and purpose of said unlawful combination, conspiracy and agreement was to wilfully, knowingly, intentionally and unlawfully distribute a Schedule I controlled substance, to wit: quantities of marijuana, in violation of 21 USC §846.
The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX months with a special parole term of two years on Count one.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMENDATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

FILED BY
☒ U.S. District Judge
☐ U.S. Magistrate

James T. Foley
Chief U.S. District Judge

Date Feb. 23, 1977
Albany, N.Y.

Indictment.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

KEVIN T. COONEY, ~~HAROLD J. LEVY, JR.~~,
CHRISTINE H. COONEY, SANDRA BROOKS, a/k/a
SANDRA BROOKS LEVY, ~~WILLIAM KATZ~~,
~~JOHN LEFEBVRE~~, ~~ELLEN KAPLAN~~, SANDRA L.
HUNT, ~~MARC COHEN~~, ~~BRUCE KAY~~, ~~CURTIS PONZI~~,
~~JOHN TIBBETTS~~, ~~MICHAEL P. HAUSER~~, ~~RALPH~~
~~CLICK~~, ~~ROBERT ROTH~~, ~~MICHELLE KOVEN~~,
and CATHI A. HESSION

76-CR-12
INDICTMENT

Cr.No. _____

(VIO: Title 21,
U.S.C.,
Sections 846
and 841(a)(1))

COUNT I

THE GRAND JURY CHARGES:

That from about the month of July, 1972, through the month of June, 1975, at or near Albany, in the State and Northern District of New York, and elsewhere, KEVIN T. COONEY, HAROLD J. LEVY, JR., CHRISTINE H. COONEY, SANDRA BROOKS, a/k/a SANDRA BROOKS LEVY, WILLIAM KATZ, JOHN LEFEBVRE, ELLEN KAPLAN, SANDRA L. HUNT, MARC COHEN, BRUCE KAY, CURTIS PONZI, JOHN TIBBETTS, MICHAEL P. HAUSER, RALPH CLICK, ROBERT ROTH, MICHELLE KOVEN, and CATHI A. HESSION, the defendants herein, and divers other persons whose names are known and unknown to the Grand Jurors, did wilfully, knowingly and unlawfully combine, conspire, confederate, and agree, together and with each other, to commit an offense against the United States, to wit: to violate Title 21, United States Code, Section 841(a)(1).

That the object and purpose of the said unlawful combination, conspiracy and agreement was to wilfully, knowingly, intentionally and unlawfully distribute a Schedule I controlled substance, to wit: quantities of marijuana.

That in furtherance of the aforesaid combination, conspiracy and agreement and to effect the objectives thereof

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the defendants at the times and places hereinafter named did do and perform the following overt acts:

OVERT ACTS

1. On or about July 17, 1972, at or near Latham, in the State and Northern District of New York, MARC COHEN, a defendant herein, delivered to HAROLD J. LEVY, JR., a defendant herein, approximately 350 pounds of marijuana.
2. On or about April 15, 1973, at or near Latham, in the State and Northern District of New York, WILLIAM KATZ, ELLEN KAPLAN, HAROLD J. LEVY, JR., JOHN LEFEBVRE and BRUCE KAY, defendants herein, possessed with intent to distribute approximately 300 pounds of marijuana.
3. On or about August 6, 1973, BRUCE KAY, a defendant herein, at or near Crescent, in the State and Northern District of New York, delivered approximately 300 pounds of marijuana to HAROLD J. LEVY, JR., WILLIAM KATZ, and others.
4. On or about June 21, 1974, at or near Tucson, Arizona, KEVIN T. COONEY and CHRISTINE H. COONEY, defendants herein, caused to be delivered to HAROLD J. LEVY, JR., at or near Crescent, in the State and Northern District of New York, approximately 300 pounds of marijuana.
5. On or about November 16, 1974, CHRISTINE H. COONEY and SANDRA L. HUNT, defendants herein, at or near Crescent, in the State and Northern District of New York, delivered approximately 400 pounds of marijuana to HAROLD J. LEVY, JR., a defendant herein.

All in violation of Title 21, United States Code, Section 846.

COUNT II

THE GRAND JURY FURTHER CHARGES:

That on or about the 15th day of April, 1973, at or near Latham, in the State and Northern District of New York, KEVIN T. COONEY, HAROLD J. LEVY, JR., JOHN LEFEBVRE, WILLIAM KATZ, ELLEN KAPLAN, and BRUCE KAY, defendants herein, did wilfully, knowingly, and unlawfully possess with intent to distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: approximately 300 pounds of marijuana.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT III

THE GRAND JURY FURTHER CHARGES:

That on or about August 6, 1973, at or near Latham, in the State and Northern District of New York, HAROLD J. LEVY, JR., WILLIAM KATZ, and BRUCE KAY, defendants herein, did wilfully, knowingly, and unlawfully possess with intent to distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: approximately 300 pounds of marijuana.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT IV

THE GRAND JURY FURTHER CHARGES:

That on or about the 6th day of May, 1974, at or near Crescent, in the State and Northern District of New York, HAROLD J. LEVY, JR., SANDRA L. HUNT, BRUCE KAY, WILLIAM KATZ,

KEVIN T. COONEY, and JOHN LEFEBVRE, defendants herein, did wilfully, knowingly, and unlawfully possess with intent to distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: approximately 800 pounds of marijuana.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT V

THE GRAND JURY FURTHER CHARGES:

That on or about June 21, 1974, at or near Crescent, in the State and Northern District of New York, KEVIN T. COONEY, CHRISTINE H. COONEY, and HAROLD J. LEVY, JR., defendants herein, did wilfully, knowingly, and unlawfully possess with intent to distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: approximately 300 pounds of marijuana.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT VI

THE GRAND JURY FURTHER CHARGES:

November 28

That on or about November 16, 1974, at or near Crescent, in the State and Northern District of New York, CHRISTINE H. COONEY, SANDRA L. HUNT, HAROLD J. LEVY, JR., KEVIN T. COONEY, WILLIAM KATZ, and ELLEN KAPLAN, defendants herein, did wilfully, knowingly, and unlawfully possess with intent to distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: approximately 400 pounds of marijuana.

- 5 -

In violation of Title 21, United States Code,
Section 841(a)(1).

COUNT VII

THE GRAND JURY FURTHER CHARGES:

That on or about December 20, 1973, at or near Albany,
in the State and Northern District of New York, KEVIN T. COONEY,
a defendant herein, did knowingly, wilfully and unlawfully
distribute controlled substance as set forth in Schedule I
of Subchapter I of Title 21, United States Code, Chapter 13,
to wit: a quantity of heroin.

In violation of Title 21, United States Code,
Section 841(a)(1).

COUNT VIII

THE GRAND JURY FURTHER CHARGES: -

That on or about November 20, 1974, at or near Crescent,
in the State and Northern District of New York, KEVIN T. COONEY,
a defendant herein, did wilfully, knowingly, and unlawfully
possess with intent to distribute a controlled substance as
set forth in Schedule II of Subchapter I of Title 21, United
States Code, Chapter 13, to wit: approximately one-quarter pound
of cocaine.

In violation of Title 21, United States Code,
Section 841(a)(1).

COUNT IX

THE GRAND JURY FURTHER CHARGES:

That on or about May 29, 1974, at or near Albany,
in the State and Northern District of New York, CHRISTINE H.
COONEY, a defendant herein, did wilfully, knowingly, and unlawfully

- 6 -

distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: a quantity of heroin.

In violation of Title 21, United States Code, Section 841(a)(1).

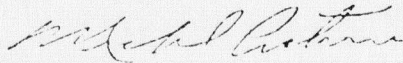
COUNT X

THE GRAND JURY FURTHER CHARGES:

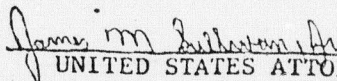
That on or about September 15, 1974, at or near Albany, in the State and Northern District of New York, JOHN LEFEBVRE, a defendant herein, did knowingly, wilfully and unlawfully distribute a controlled substance as set forth in Schedule I of Subchapter I of Title 21, United States Code, Chapter 13, to wit: a quantity of heroin.

In violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL



FOREMAN


UNITED STATES ATTORNEY

11a Notice of Appeal.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number 76-CR-12

- against -

JAMES T. FOLEY

(District Court Judge)

BRUCE KAY,

Defendant.

NOTICE OF APPEALNotice is hereby given that BRUCE KAY appeals tothe United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other
(specify) _____ entered in this action on February 22, 1977.
(Date)Joseph W. Ryan, Jr.

(Counsel for Appellant)

Address

114 Old Country Road
Mineola, New York 11501Date February 18, 1977To: PAUL V. FRENCH
United States Attorney
Northern District of New York
U.S. Court House and Post Office
Albany, New York 12207Phone Number (516) 248-6411

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

▶ QUESTIONNAIRE

☐ I am ordering a transcript☒ I am not ordering a transcript

Reason:

☐ Daily copy is available☒ U.S. Attorney has placed order☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

Prepare transcript of

☐ Pre-trial proceedings☐ Trial☐ Sentence☐ Post-trial proceedingsOrdered by Co-DefendantThe ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

COPY FOR DEFENDANT

COLLOQUOY CONCERNING INTRODUCTION
OF THE "BLOSSY" EVIDENCE

1 conspiracy?

2 MR. LOMBARDINO: Not in furtherance,
3 your Honor. It might very well be, and I think Mr.
4 Ryan is going to make argument now addressed to that,
5 that this might have very well been no part
6 of the conspiracy alleged in this indictment. This
7 may have very well been a separate venture and if
8 that be the case, your Honor, I would submit, then,
9 and strenuously so, that that has no
10 place in this trial.

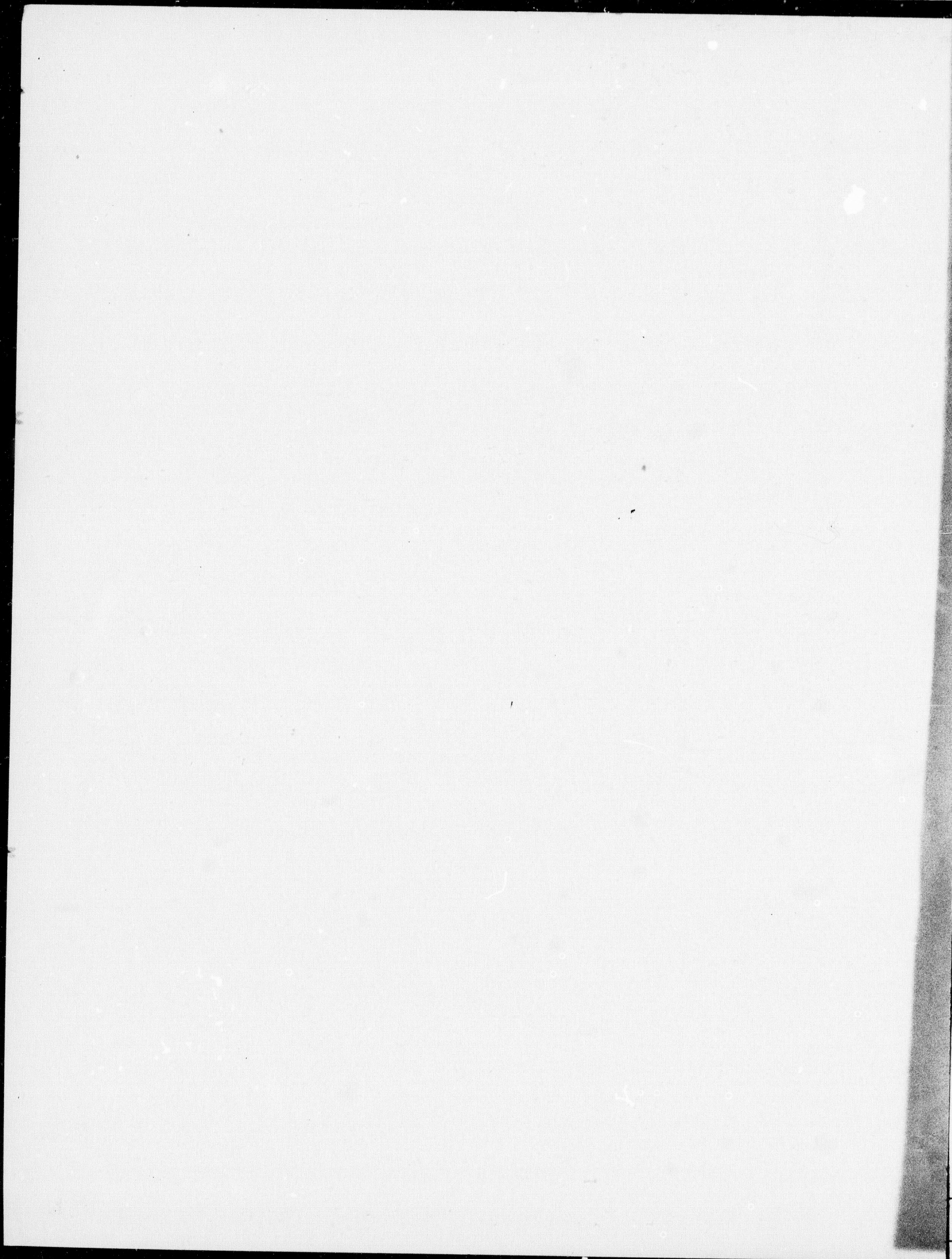
11 THE COURT: No, I am content with my
12 ruling. I did not know Mr. Ryan was in this particular
13 problem, because I only had a brief signed by Mr.
14 Lebetkin and Mr. Lombardino.

15 I will let you speak.

16 MR. RYAN: That is because I do not
17 believe the defendant Kay has standing because the
18 Government's offer does not seek to infer that Bruce
19 Kay had anything whatsoever to do with this trans-
20 action.

21 So I am not claiming that Bruce Kay
22 has standing to complain about the search based on the
23 Government's proof and that is why I have not pressed
24 the issue.

25 Now, what I do complain about is that



1 this transaction occurs in September '74 and it
2 surrounds Andrew Blossy's driving of a car from
3 Ithaca, New York to Tucson, Arizona. And the grand
4 jury minutes of Mr. Blossy establish beyond any
5 question that this trip from Ithaca to Arizona had
6 really nothing to do with the Levy house that we have
7 heard about for these past three weeks and Arizona,
8 the Cooney to Levy trips that we have heard about
9 throughout the course of this trial. And how does
10 Mr. Blossy say in his grand jury testimony that this
11 trip came about? He does not say it came about
12 because Harold Levy asked him, in fact, he does not
13 know Levy. He did not even know Cooney. The

14 It comes from a man this jury never heard
15 of, Michael Hauser, Michael Hauser is alleged to,
16 according to Blossy, to have told him in Ithaca,
17 New York, that is not Crescent, not Old Latham,
18 New York, Blossy is told by Hauser, "For a certain sum
19 of money, will you drive this car to Arizona and call
20 a guy named Kevin and I will give you the number?"

21 Now, it may very well be that there
22 was some transaction that preceded this trip in a
23 car. There is no marijuana in the car, some residue in
24 the bag, but for all purpose there is no marijuana
25 in this car, and it could very well be that this trip

1 was a payment, this is the empty leg of a Tucson,
2 Arizona to Ithaca distribution of marijuana, and
3 there isn't one word in this case, as I recall it,
4 that the trips were being made from Arizona to Ithaca,
5 the trips in this case are being made and my client
6 is supposed to be involved in from Tucson, Arizona
7 o Harold Levy's house, so this is very -- it is
8 entirely conceivable, as you read Blossy testimony
9 and I am sure that is why Mr. Dreyer raised this
10 question, it is inescapable that a realistic
11 probability here is that this separate trip was a
12 lark on a Tucson to Ithaca transaction.

13 Blossy testifies in a grand jury
14 he never was in Albany until he testified before the
15 grand jury. Michael Hauser never even heard of Bruce
16 Kay, so Bruce Kay had nothing to do with the Ithaca
17 trip and there is no reason to believe, from all the
18 evidence that we have heard, that what we are on trial
19 for is an Arizona to Ithaca trip. And that is what
20 this trip was. It emanated from Ithaca, it is an empty
21 leg with cash down to Arizona. And I must say that if
22 this comes in, Bruce Kay is going to have an awful
23 tough time getting a trial here with the jury is
24 going to be able to segment the truth. They are going
25 to hear that there was \$25,000 in a car going from

1 Ithaca to Tucson, Arizona, and they are going to hear
2 that there was a telephone number that this fellow
3 Blossy was supposed to call, and it was Kevin Cooney's
4 and when the jury hears that they are going to say,
5 "You know, there must be something to the Cooney
6 operation," and then they are going to say, "Well,
7 Mr. Bruce Kay must have been part of it," when, in
8 fact, from the grand jury minutes of Blossy, it appears
9 that this was a separate Cooney venture, if you believe
10 Blossy. And I must judge that this transaction occurs
11 in September '74 and as I review the testimony in this
12 case concerning Bruce Kay, the last time he is
13 alleged to have been involved in the Albany end of
14 the distribution of marijuana is May of '74.

15 Katz testifies to an April '74
16 transaction, Roth testifies to an April '74 trans-
17 action, they are supposed to be separate transactions
18 in that same month, and Moscowitz says in May '74
19 there was a third transaction where, at Harold Levy's
20 house. So Bruce Kay acts with respect to the
21 distribution of marijuana from Tucson to Levy's house.
22 It ends on their proof of May '74.

23 Now, I know I am not unmindful of
24 this Camussa conversation, but that you must agree,
25 Judge, it is subject to serious question of credibility

1 about as far as Bruce Kay's acts, what he did, ended
2 in May '74, and I think when you take a realistic
3 appraisal of all the proof in this case and you read
4 the Blossy grand jury minutes and -- if your Honor has
5 the time, it seems to be that this Ithaca venture with
6 Blossy was a separate one, not connected with the
7 conspiracy we have been hearing about time and time
8 again from these witnesses.

9 THE COURT: Well, first you say
10 Ithaca is in the State of New York. You mean the
11 Northern District of New York?

12 MR. RYAN: Correct.

13 THE COURT: The time period runs
14 from '72 to '75?

15 MR. RYAN: Correct.

16 THE COURT: I am not sure that the
17 indictment and the overt acts confines the prosecution
18 just from trips to Tucson to Albany. I mean, it may
19 have happened in some distance but --

20 MR. RYAN: Well, Judge, you know, if
21 I sat here and I heard witnesses talking about a trip
22 to Ithaca, a trip to Binghamton, a trip to Albany at
23 Harold Levy's house, I would say, "Sure, the jury
24 could find that there was a conspiracy, Kay, Cooney,
25 Levy and even Lefebvre, that this conspiracy scope

1 was to go to Binghamton, Ithaca, Albany, Vermont, but
2 that is not what we have been hearing. The witnesses
3 have, time and time again, said that this was one
4 leg, Tucson, Arizona, Harold Levy's house in the
5 Albany area. And I think that the scope of the
6 conspiracy, according to the Government's proof,
7 particularly if you are going to hold my client
8 responsible for it, is that I understood that there was
9 a heavy distribution to the Albany area that he
10 participated in, not to Ithaca, Binghamton or any-
11 where else.

12 THE COURT: Wait a minute. I want
13 Mr. Dreyer to respond to this argument right now.

14 MR. DREYER: Yes, Your Honor.

15 THE COURT: He seems to indicate there
16 might be another conspiracy coming in the -- that
17 does not belong within this case.

18 MR. DREYER: As we said, your Honor,
19 the theory of the Government in this case is that there
20 has been sufficient proof in the form of testimony to
21 show that the persons who are sitting at this table and
22 other persons who were involved at the Albany end of
23 the operation, were fully aware of the scope of the
24 conspiracy. Once they were aware of the scope of the
25 conspiracy, their actions in the conspiracy bind

1 them to the overall conspiracy.

2 In this case, as I said before, Robert
3 Roth in 1973 was told by Mr. Cooney that shipments
4 were going to Ithaca and to other places. He then
5 came back to the Albany area and continued to share,
6 knowing -- that continued to share in distribution
7 at Mr. Levy's house, knowing what Mr. Cooney had told
8 him.

9 Then again, you heard from Mr. William
10 Katz, who testified that in November of 1974, he was
11 advised by Harold Levy that he sustained a loss from
12 that business, it -- or, excuse me, from that arrest
13 in New Mexico. Now, the point being that if Mr. Katz
14 is believed and his testimony concerning Mr. Cooney
15 and Mr. Levy's distribution and the profits is
16 believed, then the jury can infer that that money that
17 did go out there to Tucson, Arizona, allegedly to
18 Mr. Cooney, was money that belonged to some of these
19 conspirators, in other words, Mr. Levy and Mr. Cooney,
20 so there is proof there.

21 Of course these are statements made
22 by Mr. Levy to Mr. Katz and Mr. Katz is before the
23 jury, but nevertheless, Robert Roth has testified about
24 about Ithaca and now Mr. Katz's testimony ties in
25 with that to show that there is a relationship between

1 Harold Levy and that money. Thirdly, Paul Camussa,
2 whose testimony clearly showed that he had virtually
3 very little relationship with Harold Levy in this
4 case because in some instances he was not even
5 allowed by Mr. Katz to go to the home in Crescent,
6 nevertheless in November of '74, he decided to go to
7 Paul Moscovitz and ask Paul Moscovitz whether or not
8 Mr. Moscovitz can get him up with a connection in
9 Arizona. Moscovitz says, "I know Cooney's. I will
10 try to work it out." Mr. Camussa testified that a
11 week later, he called Mr. Moscovitz, or a couple of
12 weeks later he called him and Moscovitz said, to the
13 best of Camussa's recollection, "No, we can't set it
14 up because there has been some trouble with the driver
15 in Texas and some \$35,000 was seized."

16 Now, the point of this, your Honor,
17 is that the network of the conspiracy becomes clear
18 through the inter-relationship of the testimony of
19 four or five witnesses. They all knew what was going
20 on and when they committed an act in furtherance of
21 that conspiracy, they were bound by Mr. Cooney and
22 Mr. Hauser's acts in Ithaca and that is precisely
23 our theory in this case.

24 THE COURT: But this incident that
25 we are going to hear about, the New Mexico State police

1 and let us confine ourselves to say that there is no
2 question Kay won't be named or involved in it what-
3 soever. Just stand on the general principle of
4 conspiracy.

5 MR. DREYER: That is right. Mr. Kay
6 won't be mentioned. Mr. Lefebvre won't be mentioned.
7 Mr. Levy won't be mentioned, to the best of my
8 recollection.

9 THE COURT: I think it is a permiss-
10 ible act, allowable under this type of indictment, this
11 type of charge. Principles of settled law.

12 MR. RYAN: Let me now, out of the
13 presence of the jury, shoulder that evidence be
14 admitted, I now make my motion, anticipation for severence
15 or a mistrial on behalf of Bruce Kay.

16 THE COURT: I deny the motion.

17 MR. LEONE: Judge, I join in that
18 motion on behalf of John Lefebvre, based upon Mr.
19 Dreyer's statements that Lefebvre was not even
20 mentioned in any way, shape or form, being present at
21 any of the conversations involving this New Mexico or
22 the Texas deal, and there is some question about
23 whether a person was seized in Texas or Arizona in
24 possession of a quantity of money and there has not
25 been any witness on that witness stand, your Honor, that

1 (Jury not present).

2 THE COURT: All right. I was ready
3 some time ago to come out to hear Mr. Ryan's motion
4 or application. I think along the single conspiracy
5 problem that arises sometimes in these cases but we
6 have been held up beyond that and I understand that
7 there has been interviews made of certain witnesses.

8 MR. RYAN: Right.

9 THE COURT: So do you want to state
10 your position for the record?

11 MR. LOMBARDINO: Yes, your Honor.
12 Mr. Dreyer was gracious enough to arrange through
13 Mr. Hauser's attorney an interview with which
14 myself and all the defense lawyers participated, in
15 which we spoke to what we believe to be the next
16 Government's witness, one Michael Hauser.

17 THE COURT: I see, all right.

18 All right, Mr. Ryan.

19 MR. RYAN: Your Honor, I submitted to
20 your Chambers and to Mr. Dreyer two cases, United
21 States against Miley and United States against
22 Bertolitti.

23 THE COURT: I do not like to ~~SAY~~ too
24 much, but I do for the Court of Appeals, Second
25 Circuit, I anticipated it might come up and I read it.

1 I have the slip opinion, United States against Miley
2 cited March 19, 1975, written by Judge Friendly.

3 MR. RYAN: Correct, and I also
4 submitted a report by the Drug Enforcement Agency made
5 during the course of the investigation, which I would
6 like to have marked as part of an exhibit.

7 It has a diagram of what the Drug
8 Enforcement Agency understood to be the Cooney
9 operations and you will see on that diagram, Judge,
10 just as you saw in the 'Miley case and you read
11 about in the Bertolitticase, that the Ithaca operation
12 was a separate, independent operation and had
13 different members in it. If you look in the chart
14 under "Ithaca," you will see "Michael," I think "Last
15 name unknown." That is Michael Hauser, "Tony, last
16 name unknown," and I think a "Marty, last name
17 unknown." You will find not one word or mention of
18 our clients in that Ithaca operation, and to the
19 right of the Ithaca chart, you will see the Albany
20 line-up, about the Albany operation, and there you will
21 find are the clients and witnesses in this case,
22 Katz, Kay, Levy, Lefebvre and others. And I think,
23 as I told your Honor yesterday, I really was under the
24 distinct impression that the \$25,000 Blossy incident
25 was unrelated to the conspiracy we have been trying

1 here, the agreement between these defendants and --
2 in light of the evidence, the agreement that the
3 marijuana would go from Tucson to Levy's house and be
4 distributed in the Albany area. I do not know how
5 anyone can say, from the evidence, that that was the
6 agreement, that the Government is proving here in this
7 case, and that is the agreement that the overt acts
8 talk about in the conspiracy indictment.

9 Now, I have since had an opportunity
10 this morning, the first time, to interview Michael
11 Hauser, and Michael Hauser would give your Honor
12 testimony which would demonstrate that his involvement
13 with Cooney in the Ithaca operation had nothing what-
14 soever to do with Levy, Kay, Lefebvre, Roth, Katz and
15 the others in this case, and that his dealings with
16 Cooney in this regard was wholly independent of any
17 Albany operation. And the \$25,000 related to --

18 THE COURT: Did he say he had dealings
19 with Cooney? Is he going to testify to that?

20 MR. RYAN: He would say that the money
21 was going down to buy pot from Cooney. Now, that gets
22 down, as far as Cooney is concerned, is the same as
23 offering evidence of another crime against Cooney.
24 That is what it would boil down to, in my judgement,
25 evidence of another crime.

1 THE COURT: I do not agree with that.
2 You may have that judgement. At least there is some
3 involvement by Hauser of Cooney --

4 MR. RYAN: Correct, that is what --

5 THE COURT: -- in Ithaca.

6 MR. RYAN: This was the suspicion
7 I had reinforced by non-hearsay evidence by
8 Michael Hauser. Now, I know Mr. Dreyer referred to
9 some of the witnesses here.

10 THE COURT: Conversations?

11 MR. RYAN: Conversations with Katz
12 and Levy, Okay, and the inference from their conversa-
13 tions is that the witness with Levy -- was that some-
14 how the \$25,000 related to the Albany operation, okay.
15 But the best proof of that will be not only the
16 D.E.A.'s own evaluation and chart, and not only the
17 identities of the parties in the Ithaca operation as
18 opposed to the parties in the Albany operation, but
19 HaUser. That no matter what these witnesses said,
20 the \$25,000 had nothing to do with the Albany
21 operation, that was a separate Ithaca operation.

22 Now, you take --

23 THE COURT: Wasn't the testimony
24 along the lines that it sort of dampened the Albany
25 operation, that we had trouble and and one guy said

1 "Texas" --

2 MR. RYAN: Judge, that may have been
3 testimony from accomplices on hearsay statements, and
4 that is -- that was really coming in subject to
5 connection. The connection would be established --
6 or the non-connection would be established by competent
7 non-hearsay evidence of Michael Hauswer. The
8 unreliability of those statements, that these witnesses
9 testified to, would be demonstrated by the competent
10 proof of Michael Hauser, and I do not think the Judge
11 will have any problem on the credibility of Michael
12 Michael Hauser in own view of the D.E.A.'s own evidence
13 in this case as shown by that chart, Your Honor, and
14 there is one further thing.

15 THE COURT: The credibility will be
16 for the jury. It is unusual to have to say there is
17 no question --

18 MR. RYAN: Judge, if this comes in
19 when Bruce Kay and the evidence against Bruce Kay
20 shows that if he was involved, he was involved in the
21 Albany operation, he had no reason to believe or
22 suspect that the agreement that he was participating in
23 had to do with shipments going to Ithaca and Michael
24 Hauser, Michael Hauser never heard of Bruce Kay. The
25 only fellow that Michael Hauser knew --

1 THE COURT: That happens, as you know
2 and it has been written in the Second Circuit, some
3 conspirators never see each other, ~~knew~~ nothing about
4 it as long as it is a continuing chain, the same
5 conspiracy.

6 MR. RYAN: Right. The same chain, but
7 here you have two chains. You have a chain from
8 Tucson to Ithaca with certain parties, Cooney is the
9 only common denominator between the chain to Ithaca
10 and the chain to Albany.

11 THE COURT: That might be competent
12 enough right there.

13 MR. RYAN: Judge, if you look at the
14 Miley case and see that chart --

15 THE COURT: I have read it.

16 MR. RYAN: -- and you saw the chain
17 on the left with those defendants, they were defendants
18 and there was a fellow on the right, Veragos, I
19 believe his name is.

20 THE COURT: Yes.

21 MR. RYAN: Okay, and the Court said
22 that there was no reason to believe that Veragos
23 had anything to do with the parties on the left and
24 there was no reason to believe the parties on the left
25 had anything to do with the right, and they said it was

1 a separate conspiracy, but then they said there was
2 no prejudice.

3 THE COURT: Each one depends on its
4 own facts. Y. give me United States against
5 Bertolitti, 52 d. 149, 154, I think the pages are,
6 to 157, that came after this Miley case. It was
7 written by Judge Van Graffland, November 1975, and in both
8 of these case, of course they reject this connection
9 that there was --

10 MR. RYAN: Only on grounds of
11 prejudice. They said there were separate conspiracies,
12 but the presence was not substantial enough. Now, in
13 this case there is no reason to believe if you take
14 the Government's evidence that Bruce Kay had anything
15 whatsoever to do with an Ithaca operation or that he
16 knew Michael Hauser or anybody else involved in the
17 Ithaca operation.

18 THE COURT: Well, it is an incident
19 that is portrayed more by testimony as part of a
20 conspiracy.

21 MR. RYAN: Judge, I want to offer the
22 testimony of Michael Hauser in support of my motion.

23 THE COURT: The what?

24 MR. RYAN: The testimony of Michael
25 Hauser in support of my motion.

1 THE COURT: I did not hear.

2 MR. RYAN: I want to offer the
3 testimony of Michael Hauser under oath before your
4 Honor to demonstrate to you that there was no
5 connection between this \$25,000 seizure, the Ithaca
6 operation, and Kay and Lefebvre and Levy.

7 THE COURT: I think the thing is
8 getting far out of proportion to what it really is in
9 relation to this conspiracy that is the charge in this
10 indictment. I do not see the substance that you claim
11 is present here, prejudice to any of these defendants.
12 I think, Mr. Dreyer, you should answer, because it is
13 your case as far as the prosecution's testimony.

14 MR. LEONE: Before Mr. Dreyer answers,
15 I join in Mr. Ryan's application to preclude Mr.
16 Hauser from testifying based on all the arguments used
17 by Mr. Ryan, and also join in his application to have
18 Mr. Hauser placed on this stand in the absence of the
19 jury for your own Honor's perusal of his testimony.

20 THE COURT: We have to move along now.
21 That may be something that a judge should not keep in
22 mind all the time, but we will be here until Christmas.
23 Maybe that is one of the purposes of carrying a --
24 hearing a lot of testimony.

25 MR. RYAN: Judge, if I could persuade

1 the merits of my motion, we could be summing up
2 Friday because the rest of this case is all on this
3 Blossy incident, which is unrelated to the agreement.

4 THE COURT: I am going to hear
5 Mr. Dreyer because here is one incident that you want
6 to put in in your case that seems to be pointed to as
7 one of great magnitude that is going to destroy all of
8 the other charges.

9 MR. DREYER: First of all, to put
10 this in perspective, Mr. Ryan has alluded to a chain
11 conspiracy, and then has said in this particular case
12 the Blossy incident will show two chains, in effect the
13 Government will point out that the case law in the
14 Second Circuit establishes two types of conspiracy,
15 one is a chain conspiracy and the other what is known
16 as a spoke or wheel conspiracy, and the Second
17 Circuit has recognized that at the end of a chain
18 conspiracy, the chain conspiracy being one where you
19 have a common suppliers, buyers and distributors, you
20 may have a situation where a spoke or wheel
21 conspiracy arises that is, let us assume, that the
22 supplier in a given chain conspiracy does have
23 spokes jutting out to other conspirators across the
24 country. And I think what Mr. Ryan has said is that
25 in this particular case, Kevin Cooney had a separate

1 spoke.

2 MR. RYAN: I do, correct.

3 MR. DREYER: That he had a separate
4 spoke to Michael Hauser in Ithaca.

5 Now, in his treatise on Federal
6 Practice and Procedure, Wright, at page 332 of
7 Volume 1, has said this about the wheel conspiracy:
8 "The difference thought to exist between them" --
9 that is the wheel conspiracy and the chain conspiracy
10 -- "is that in a wheel conspiracy it is said that
11 there must be proof that those at the spoke knew of
12 the existence of the other spokes and thus knowingly
13 participated in a single, overall conspiracy."

14 MR. RYAN: Correct.

15 MR. DREYER: Now, in this particular
16 case, it is clear that from at least 1973 through 1974,
17 that kind of information was available to witnesses
18 who testified here and who were right in the middle of
19 the Albany part of the operation. If this is a spoke
20 conspiracy or if there were spokes to other cities, it
21 is clear that all of these people were operating in one
22 overall conspiracy. Nevertheless, this may not be a
23 spoke conspiracy. That is merely a defense allegation
24 that it is a spoke conspiracy. In effect it may in
25 fact be a chain conspiracy just by virtue of the fact

1 that there is a common supplier, a co-mingling of
2 funds as testified by Katz, the common supplier, by
3 the way, being Kevin Cooney, common headquarters,
4 Tucson, Arizona, and I am getting these facts
5 right out of the Tralenti case which appears in the
6 same volume as the Miley case.

7 THE COURT: Well, the Miley case you
8 should give Citations 513 F.2d. 1191. So I guess we
9 are agreed that Hauser, at least, is going to
10 implicate Cooney to some extent, Mr. Dreyer.

11 MR. DREYER: Your Honor, I must say
12 that I have not interviewed Michael Hauser.

13 THE COURT: I do not know --

14 MR. DREYER: No, Judge, I am just
15 going to put him on and go on from there.

16 MR. RYAN: Well, that is all the more
17 reason, Judge, why I would like to have this testimony
18 elicited out of the presence of the jury.

19 THE COURT: No, I am not inclined at
20 all to do it. Something of that substance would
21 make me hesitate, and because I am a judge of great
22 caution --

23 MR. RYAN: I know you are, Judge.
24 Then I would like, in support of this motion, to mark
25 the Blossy grand jury minutes as it further establishes

1 in my judgment, that this \$25,000 had nothing to do
2 with the conspiracy we are trying in this case.

3 THE COURT: Well, you can mark it,
4 but I think under our particular facts and particularly
5 the recitation of facts that Mr. Dreyer gave yester-
6 day as far as the conversation of other witnesses, I
7 think it might be considered a chain conspiracy. So my
8 ruling is to allow Hauser, whom I guess Mr. Dreyer has
9 not even interviewed --

10 MR. RYAN: Yes, which is very
11 dangerous, Judge. The Government puts a witness on
12 the stand without any reasonable expectation.

13 THE COURT: It is also very fair when
14 he does it, but he allows you to interview him. It
15 is unusual.

16 MR. RYAN: I have no objection to Mr.
17 Dreyer interviewing Hauser. That may be a decision
18 between Hauser and his attorney and Mr. Dreyer.

19 THE COURT: Well, he is conducting his
20 case.

21 Mr. Lebetkin?

22 MR. LEBETKIN: Your Honor, in support
23 of this argument advanced by Mr. Ryan, I would just
24 like to point out one thing, that there has been a
25 prejudice at this trial by reason of the way the

1 Government has presented certain evidence and I
2 recognize the right of the Government in a conspiracy
3 case to present evidence of some -- someone joining a
4 conspiracy before he makes out the conspiracy itself.

5 I know that the law permits that. But
6 there is a prejudice here and there is an illusion,
7 Katz testified that Harold Levy made a statement with
8 respect to the \$25,000 and that is before the
9 testimony of Hauser comes in. Now that statement --
10 that Katz made is obviously a hearsay statement and it
11 would be admissible against Levy if the connection to
12 the conspiracy was first made out, but I respectfully
13 submit that after your Honor hears Hauser's testimony
14 you will realize that Hauser is not connected to Katz
15 or Levy or Roth or Moscovitz or anyone who has been
16 here at this trial. And that therefore it may well be
17 that I would be obliged after that to move to strike
18 any prior testimony which anyone gave with the alleged
19 statement by Levy and the \$25,000 because it would then
20 become in the category of not being accepted under the
21 hearsay rule since the foundation was not laid, but
22 never proven. And I would respectfully submit that
23 under the cases as I understand them, I could not have
24 a chain conspiracy, a spoke conspiracy or wheel
25 conspiracy or any kind of conspiracy unless in this

1 case or in the other case you could show that the
2 parties knew someone else and in this case it could
3 not be made out just by showing that he knew Cooney,
4 because obviously in distinguishing between one kind
5 of a conspiracy and the other there is always
6 testimony by one person that he knew at least one
7 other person and in this case it would be Cooney
8 and the question arises whether, in addition to
9 knowing Cooney or a Cooney, he would know anyone else
10 there and that would be absent from this case, and that is
11 why I believe Mr. Ryan made that offer of proof.

12 THE COURT: I have made my mind up.

13 MR. RYAN: Okay, Judge.

14 THE COURT: So we will bring in the
15 jury. Is Mr. Hauser your next witness?

16 MR. DREYER: Yes, your Honor.

17 THE CLERK: Judge, I have marked
18 Defendants' Exhibit O for identification, transcript
19 of Blossy's testimony before the grand jury, January 7
20 1976.

21 (Jury enters Courtroom).

22 THE COURT: All right, Mr. Dreyer.
23 Call your next witness.

24 MR. DREYER: The Government calls
25 Michael Hauser....

Grand Jury Testimony of Andrew J. Blossy.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK
3 -----

4 UNITED STATES OF AMERICA, :

5 -against- :

6 KEVIN COONEY, ETALS., :

7 Defendants. :
8 -----

9 Proceedings in the above-entitled matter
10 were held pursuant to notice at the United States
11 District Court before a federal grand jury duly
12 empanelled for the Northern District of New York, at
13 Albany, New York on January 7th, 1976.
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1 A P P E A R A N C E S:

2 HON. JAMES M. SULLIVAN, JR., United States
3 Attorney for the Northern District of New York,
4 Federal Building, Syracuse, New York 13205, By:
5 WILLIAM J. DREYER, ESQ., Assistant U. S. Attorney,
6 Of Counsel, representing the United States.

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ANDREW BLOSSY

called as a witness before the Grand Jury, being first duly sworn by the Foreman of the Grand Jury, was examined and testified as follows:

BY MR. DREYER:

Q Please state your full name to the Grand Jury?

A Andrew Blossy.

Q What is your address, Mr. Blossy?

A Ithaca, New York. Right now General Delivery.

Q Do you reside in Ithaca?

A Yes.

Q What is your address?

A 67-1/2 Lane Road.

Q How long have you resided in Ithaca, New York?

A This period of time, two weeks. Up to this time, six years.

Q What is your occupation, Mr. Blossy?

A Mechanic.

Q Tell the Grand Jury what education you have had?

A I graduated from Ithaca College.

Q From Ithaca College. When did you graduate from Ithaca College?

A September 1, 1972.

Q At that time, did you have any contact with any other college as a student?

1 A Well, yes. Westchester Community College.

2 Q When did you go to Ithaca College?

3 A January 1969.

4 Q I direct your attention to September 27, 1974. Do you
5 remember that day?

6 A Yes, I do.

7 Q Did anything unusual occur on that day?

8 A Yes. I was stopped by the New Mexico State Police.

9 Q Where?

10 A I think approximately ten miles east of Las Cruces.

11 Q I want you to recall that day and tell the Jury about
12 what time that happened?

13 A Early afternoon. I think about 1:00 o'clock or so.

14 Q Were you driving an automobile at that time?

15 A Yes.

16 Q What kind of an automobile were you driving?

17 A Two door green Chevrolet, '73 or '74. A relatively late
18 model sedan.

19 Q Did you own that automobile?

20 A No.

21 Q Did you have evidence of ownership with you at that time?

22 A Yes.

23 Q Did you have the registration with you?

24 A Yes.

25 Q Do you know what the registration showed for ownership

1 of the car?

2 A It showed a man's name.

3 Q What name?

4 A Ciola.

5 Q Did you know a Mr. Ciola?

6 A No.

7 Q What State was the car registered in?

8 A New York.

9 Q Tell the Grand Jury the circumstances leading up to the
10 stop?

11 A I was passing a car bearing on a three lane, and I was
12 pulled over for speeding by the State Police. At that
13 time they asked me for my license, registration, what
14 was I doing in the car, and mostly whose car was it.
15 At this point the man's name on the registration, I
16 didn't know his name, I couldn't pronounce it and it
17 was very confusing to myself and the State Police asked
18 whose car it was.

19 Q In other words, you were not able to pronounce the name
20 Ciola?

21 A Yes.

22 Q What happened after that?

23 A They thought it might be a stolen vehicle and wanted me
24 to explain my presence in it, and in the State of New
25 Mexico. I couldn't. I told them it was loaned to me

1 and I was driving cross country. They checked to make
2 sure it was not a stolen car. It was not. They were
3 writing me out a speeding ticket and at that time the
4 man who came with the State Police Sargeant, asked me
5 if I would permit him to look in the trunk of the car.
6 I said yes.

7 Q What happened after that?

8 A They looked in the trunk, found two garment bags. One
9 of them had a small box in it, about the same dimensions
10 of half a shoe box. One of the policemen opened the box
11 up and found quite a lot of money in it.

12 Q What did they do with the money?

13 A Kept it.

14 Q What did they do with the box?

15 A Left it there.

16 Q What did they do with the automobile?

17 A Took it to the police station.

18 Q After they found the material in the back of the car,
19 what did they do then?

20 A Questioned me.

21 Q At the scene?

22 A At the scene, for half an hour, along the road. Sort
23 of brief questioning which described the material. The
24 actual questioning took place fifteen minutes later at
25 Las Cruces State Police Barracks.

Q With whom did you speak there?

A A policeman by the name of Ring.

Q Ring?

A Yes. And two federal narcotics police, that I don't remember the name.

Q What was the substance of the conversation that you had with those officers?

A The crux of the matter was what were you doing traveling through New Mexico with twenty-five thousand six hundred dollars in the car.

Q In addition to that, did they recover anything else?

A A pipe which I had in my pocket, which was an implement for smoking marijuana, and two ounces of marijuana.

Q Do you know of anything that they found in the clothing bags?

A At that time?

Q Yes.

A There was nothing I knew about. Later on there was a small amount of debris that had accumulated.

Q At the time they found the money, did you know how much was in the box?

A No.

Q After you went to the barracks, what happened when they asked you about what you were doing in New Mexico?

A They recovered from my hat a slip of paper with the name

1 Michael and Kevin and Christine with numbers.

2 Q Did they ask you who Kevin was?

3 A Yes.

4 Q What did you tell them?

5 A I told them I didn't know specifically who he was, but
6 I was suppose to call that number when I got to the
7 Tuscon area.

8 Q Did they ask you whether you knew Kevin's last name?

9 A Yes.

10 Q What did you respond?

11 A No.

12 Q At that time did you know the last name of Kevin?

13 A At that time, no I didn't.

14 Q Concerning this name Michael on a slip of paper, did
15 the officers ask you if you knew that person?

16 A Yes.

17 Q Did they ask you if you knew his last name?

18 A I said I didn't want to tell them. The fellow was a
19 friend of mine and they should find out for themselves.

20 Q Do you know his name?

21 A Yes. His name is Michael Hauser.

22 Q Where is Mr. Hauser from?

23 A Ithaca.

24 Q How long have you known Mr. Hauser?

25 A Five years.

1 Q Getting back to the time when the police recovered the
2 slip of paper from you, what else did they recover?

3 A They were interested in who the people were. Obviously
4 they seemed to be under the impression that I was going
5 to pick up a load of drugs.

6 Q Why were they under that impression? Did you make that
7 statement to them?

8 A No. There was what you might call an obvious situation.
9 The money was there and the two bags in the car and I
10 couldn't account for it.

11 Q You are assuming that that was their impression at the
12 time?

13 A Yes.

14 Q What happened after that?

15 A They called the--they took the paper from me and called
16 up the phone number.

17 Q Speak up. Talk to the Grand Jury.

18 A They called the Arizona phone number next to the man
19 named Kevin.

20 Q How do you know they called that number?

21 A I was sitting at the desk when the officer called.

22 Q Who called?

23 A One of the officers. I don't know who it was.

24 Q Were they dressed in uniforms?

25 A No. I feel it was a federal officer but I am not sure.

where
is
paper

1 They called up the Tuscon number.

2 Q How do you know they called the Tuscon number?

3 A I am not sure. But they said they were going to.

4 Q And did they use the slip of paper that you had?

5 A Yes.

6 Q Was there any device on when they called, if you recall?

7 A There might have been a tape recorder.

8 Q Was there anything set up that you know it was a record-
9 er?

10 A Yes. It was a small external speaker. They called the
11 number and a woman answered and he said, "This is
12 Andy. I am calling from Las Cruces, New Mexico. The
13 engine blew up." The voice at that time had not been
14 identified. She said, "Are you Michael Zandi," and
15 the policeman said yes. He was asking for this man
16 named Kevin, and the voice said, "Kevin is not here."
17 And she said, "Call back in an hour."

18 Q And at that time you were sitting in the police barracks?

19 A Yes.

20 Q After that telephone call, what happened?

21 A More general questions of my presence there, who was
22 Kevin, what are you doing here.

23 Q There came a time when you observed one of those officers
24 making another telephone call utilizing that same piece
25 of paper?

1 A Yes. Approximately an hour after the same woman
2 answered indicating that the man had not called. At
3 that time the New Mexico police seemed satisfied and
4 said, "We will put you in a motel."

5 Q Prior to doing that, you indicate that you had more
6 conversation with them between the first and second
7 telephone call?

8 A Yes.

9 Q Specifically, do you remember the nature of the con-
10 versation?

11 A What they were trying to find out is whether I was
12 employed in transporting or buying or selling of
13 narcotics interstate, and stuff like that. And who are
14 these names. Did you know how much money was there?
15 Are you supposed to pick anything up? Questions of that
16 nature.

17 Q Did you tell them at the time that you were going to
18 go to a certain location?

19 A No.

20 Q Did you tell them that you were heading for a certain
21 State?

22 A Yes, I told them I was going to Tuscon.

23 Q You tell them for what purpose you were going there?

24 A Yes. Of those two numbers supplied to me, I was to call
25 one when I got within the Tuscon area, and the person

1 who would be there, and I was never instructed who it
2 was to be, would be there if I called him, and I would
3 be at that point instructed where to go and surrender
4 the keys to the car to whoever met me there.

5 Q In Tuscon?

6 A Yes.

7 Q You said nothing to the police officer of what you were
8 going to do with the car after you delivered the box of
9 money?

10 A I was not supposed to deliver a box of money to anybody
11 or anything that was in the car. I was instructed not
12 to touch it. As a matter of fact, the F.B.I., the
13 police asked what I was supposed to do and I said I was
14 supposed to deliver the car, get a plane ticket and fly
15 back.

16 Q Did you state to the police officers at that time that
17 you would make yourself available to drive a load back
18 from Tuscon for one thousand dollars?

19 A No.

20 Q You did not state that to the State Police?

21 A No, I didn't.

22 Q You ever state to the State Police that you were going
23 to be employed to carry back a load for one thousand
24 dollars?

25 A No. I said the offer had been made to me.

1 Q Explain that.

2 A Two years ago, August or September of 1973, the same
3 mentioned man, Michael, at one point asked or suggested
4 if I would be willing to drive a car across country.
5 The destination would have been from Michigan where it
6 was to come from, to out west, and I would be paid a
7 thousand dollars for the trip.

8 Q This offer was before 1974?

9 A Yes.

10 Q And you said this to the police?

11 A Yes.

12 Q And the offer came from this Michael Hauser?

13 A Yes.

14 Q You said the police put you up in a motel?

15 A Yes, which I paid for.

16 Q Which you paid for?

17 A They could not pay for it.

18 Q What happened after that?

19 A They indicated that they would be by early in the morn-
20 ing, 9:00 o'clock, that they would take care of the
21 speeding ticket, and meet me there.

22 Q For what purpose would they meet you?

23 A They didn't explain.

24 Q Did they ask you to cooperate in the investigation they
25 were conducting?

1 A At the time they did. They wanted me to drive the car
2 and would follow me, and I said no.

3 Q What happened on the morning of the 28th?

4 A I waited around the motel until 12:30. Nobody showed up
5 and I left. I got a Greyhound ticket and went back to
6 Ithaca.

7 Q You purchased the ticket?

8 A Yes.

9 Q With what?

10 A The remaining money I had in my pocket. It was eighty-
11 six dollars. The ticket cost eighty-five dollars and
12 fifty-cents.

13 Q You said you were stopped in New Mexico sometime in the
14 early afternoon of September 24, 1974?

15 A Yes.

16 Q Where were you coming from?

17 A Ithaca.

18 Q When did you leave Ithaca, New York?

19 Q Either Monday or Tuesday of the same week.

20 Q Where were you going?

21 A To Tuscon.

22 Q What was the purpose of your trip to Tuscon?

23 A Specifically to transport this car from one place to
24 another.

25 Q Were you employed for this purpose?

1 A I was offered two hundred and fifty dollars to do it.

2 Q State to the Grand Jury the circumstances surrounding
3 your being offered two hundred and fifty dollars to
4 take this car to Tuscon, Arizona?

5 A What led up to it?

6 Q Yes.

7 A Pretty much a meeting on the street, an informal con-
8 versation I had with Michael.

9 Q This is Michael Hauser?

10 A Yes.

11 Q When did that take place?

12 A I don't know. It must have been a week or a couple of
13 weeks before the actual trip took place.

14 Q You can't pinpoint the date?

15 A Yes.

16 Q You knew Michael Hauser at that time?

17 A Yes. I had previous association with that man back
18 about 1971. In February we had been living on the same
19 street, University Avenue, Ithaca, New York, a block
20 away from each other. At that point we were both down
21 on our luck with money.

22 Q This was in 1971?

23 A Yes. February. He came up to me with a possibility he
24 knew a man who could offer me a couple of bricks of
25 marijuana meaning pressed blocks, and would I be willing

1 to help him sell them. I said, "Yes".

2 Q This is in 1971. Before we got back to '71, jumping
3 ahead to '74, what did he tell you when he met you on
4 the street, concerning the trip to New Mexico and
5 Arizona?

6 A "Would you be willing to drive this car for two hundred
7 and fifty dollars cross country."

8 Q Did he explain the circumstance of the trip?

9 A No, he didn't.

10 Q Did he tell you whether it was related in any way with
11 this previous offer of driving loads of marijuana?

12 A No, he never did.

13 Q In 1974, did he tell you how much money was to be
14 delivered to Tuscon?

15 A That became part of the bargain.

16 Q Explain the circumstances that led up to your finding
17 out that money was to be delivered.

18 A It was pretty informal. Michael speaking to me, he said,
19 "You would take some money with you;" and I said, "Yes".

20 Q Did he tell you how much?

21 A No.

22 Q Did he tell you what the money was going to be used for?

23 A No, he didn't.

24 Q Did he tell you where the money came from?

25 A No. I didn't know.

1 Q At the time Mr. Hauser met you and made the initial
2 offer to drive the automobile for two hundred and fifty
3 dollars, was anybody else there?

4 A I think his girlfriend Susan was there.

5 Q Did she do any talking?

6 A No.

7 Q Concerning the subsequent meeting when you were advised
8 about the money, was she present too? ^{vi}

9 A No. I can't remember whether she was there. This was
10 at the house.

11 Q In other words, this took place at Mr. Hauser's apart-
12 ment?

13 A At the house.

14 Q At the time Mr. Hauser made the offer to you, where was
15 he living?

16 A I don't know the name of the road. It was a small
17 housing complex across from the New York State Junction
18 that comes into Ithaca on Route 13. I don't know the
19 name of the road.

20 Q Did you and Mr. Hauser ever sit down and make plans for
21 your trip to Arizona?

22 A Yes we did. We made travel plans. He pretty much asked
23 what route I would like to take. In other words, do you
24 want to go through the mountains. Take your choice.

25 Q Did he tell you that he would call and make arrangements

1 about your arrival?

2 A No.

3 Q He tell you when you arrive in Tuscon?

4 A No. There was no time specified. Take your time. Get
5 there when you can.

6 Q Did he map out the route?

7 A No. It was more or less up to me to go the way I wanted
8 to.

9 Q What route did you take?

10 A New York, Pennsylvania, West Virginia, Arkansas, Texas
11 and New Mexico.

12 Q At the time you left, did you know the garment bags were
13 in the automobile?

14 A Yes.

15 Q Did you know whether there was anything in those garment
16 bags?

17 A I knew they were empty.

18 Q Did you know what the garment bags were to be used for?
19 Did he make any statements?

20 A Something about having to use them again, but he made
21 no specific statement. Just "we will use them again."

22 Q Did he tell you what they had been used for in the past?

23 A No. But I was assuming at that time that they had been
24 using them for shipping marijuana. It wasn't told me
25 but the thought occurred to me, but I didn't ask questions.

1 at that point.

2 Q And he didn't tell you the source of the twenty-five
3 thousand dollars?

4 A No.

5 Q How many days did it take you to get to the point in
6 New Mexico where you were stopped?

7 A I think I left on Monday and was driving eight hour days
8 until I was stopped.

9 Q During the trip, did you make any phone calls back to
10 Michael Hauser or to the phone number of Kevin?

11 A No.

12 Q Did you ever indicate approximately when you would arrive
13 in Tuscon, Arizona?

14 A No.

15 Q So you had no contact with anybody from the time you
16 left New York State until you were stopped in New Mexico;
17 is that correct?

18 A Yes.

19 Q You stated before that you knew Mr. Hauser for a period
20 of five years. When did you first become acquainted
21 with Mr. Hauser? Under what circumstances?

22 A Students.

23 Q At Ithaca College?

24 A At Ithaca College.

25 Q You started to tell the Grand Jury about an approach he

1 made to you in '71 concerning drugs?

2 A Yes.

3 Q Go back to the start and tell the Grand Jury what he
4 told you in 1971?

5 A More or less that we could get an operation in drugs,
6 and, "if you want to help me sell them" meaning you
7 wouldn't have to pay for the stuff, that you ship it out
8 to another direction.

9 Q When was this?

10 A February. But the specific day I don't know.

11 Q Did he tell you where these drugs would come from?

12 A Yes, from a man named Marty Wishner, but I am not sure.

13 Q Did he tell you what geographical location this
14 marijuana would come from?

15 A Not specifically. I got the indication it was coming
16 from out west. I didn't hear Tucson mentioned. It was
17 put as, "from out west", but I don't really know where
18 from.

19 Q Concerning Wishner, was he also a student at Ithaca
20 College?

21 A He was, but not at that time.

22 Q Did you know him personally?

23 A Vaguely.

24 Q And in 1974, Wishner's name was mentioned to you as a
25 source of the drugs supplied to you or Mr. Hauser?

1 A Yes.

2 Q Were those drugs ever supplied to you by Mr. Hauser?

3 A Yes.

4 Q When?

5 A At what time?

6 Q [In February '71.]

7 A Yes.

8 Q Can you describe the circumstances under which they were
9 delivered to you?

10 A I didn't get them. Hauser did. I more or less got a
11 call from Michael saying, "Come on up, Andy. There is
12 some drugs here," and it looked like he had it in a foot
13 locker.

14 Q Where was this located?

15 A In his house.

16 Q What happened when you got there?

17 A Nothing. We looked at it.

18 Q Do you know how much was in there?

19 A Twenty-five or thirty pounds.

20 Q What was done with the so-called drugs?

21 A They were cut into individual pounds and sold.

22 Q Did you take part in the selling of those drugs?

23 A Yes, I did.

24 Q Was Mr. Wishner ever present when those drugs were dis-
25 tributed?

1 A No.

2 Q How many times after this February transaction did you
3 get involved with Mr. Hauser in selling drugs?

4 A Not too often. That was the first time. I think we
5 went through a grand total of eighty pounds on that
6 particular occasion. I couldn't say that it was more
7 than once or twice. There was never more than one or
8 two pounds sold on my part.

9 Q Was this the first time that you worked with Mr. Hauser?
10 Had you worked with him previous in selling any drugs,
11 from the time you sold the marijuana in 1971? Did you
12 engage in the business with Mr. Hauser in selling drugs
13 other than marijuana?

14 A No.

15 Q You have any information whether Mr. Hauser had cocaine
16 or any other substance?

17 A I was never interested in that and I don't think he was
18 either.

19 Q Between 1971 and the time you stopped in New Mexico,
20 did you use marijuana personally?

21 A Yes.

22 Q What was the source of your marijuana? Was Mr. Hauser
23 one of the sources?

24 A Actually no. My sources were my nickle and dime
25 connections.

1 Q After February 1971, did Mr. Hauser ever call you and
2 say another load has come in, will you help me unload it?
3 That ever happen?

4 A Yes.

5 Q How many times?

6 A I would say two or three times.

7 Q Do you remember the times, the dates?

8 A I would say once every four weeks.

9 Q Did he ever tell you where those loads were coming from?
10 Did he ever tell you that Mr. Wishner had delivered those
11 loads to him?

12 A After the first time, one was delivered, he said, "This
13 will turn us on" and I assumed it was his, but he never
14 mentioned it again.

15 Q You said the first load in February 1971 was approximately
16 twenty-five to thirty pounds?

17 A No.

18 Q Was that the largest load?

19 A No. It was one case-full and out of that we sold
20 eighty-six or ninety pounds.

21 Q Based on your own experience, do you remember what type
22 of marijuana this was?

23 A Mexican marijuana. That is what everybody called it.

24 Q What do you mean "everybody"?

25 A Well, there is Columbian and Mexican, and this was

1 Mexican.

2 Q Who is "everybody"?

3 A Us. That is what we called it. I assume that this came
4 from Mexico.

5 Q Did you ever see Mr. Wishner involved in any of these
6 transactions which took place between you and Mr. Hauser?

7 A No. Hauser always went and picked it up.

8 Q Did he always bring it back in the same type of suitcase?

9 A Yes.

10 Q How much money did you make from the operation?

11 A I believe we made five dollars apiece from each pound.

12 Q And each shipment was one or two kilos?

13 A About that.

14 Q During your relationship with Mr. Hauser, did you meet
15 any other persons involved with Mr. Hauser in dis-
16 tributing or picking up marijuana?

17 A Over the period of five years?

18 Q Yes.

19 A I think one man might have been involved in picking it
20 up. A man named Kenny Hecht. He is the only person I
21 could think of that might conceivably have an association
22 with Michael Hauser.

23 Q What information do you have that he did pick up a load?

24 A Hearsay.

25 Q What are you basing your impression on? What is the basis

1 of your information?

2 A We all pretty much ran along the same company when I
3 got my offer to drive the thousand dollar thing in '73..

4 Q What do you mean "company"?

5 A Just a group of friends. People Hauser might know, I
6 knew too. Ran in the same society.

7 Q So in this relationship, you became friendly with Mr.
8 Hecht?

9 A He was a roommate of mine in '70.

10 Q So there were people involved in this association?

11 A Yes.

12 Q You said that you--singled out Mr. Hecht?

13 A I am not sure. It could have been another person in much
14 the same category as mine. Pretty much out of work.

15 Q Did Mr. Hecht ever tell you that he had driven in a load?

16 A Not really, although I think he did.

17 Q What do you mean by that?

18 A He suddenly got a haircut one day. Up to that point he
19 was long-haired, and all of a sudden he is short-haired.

20 Q What did he tell you?

21 A He didn't tell us anything, but one day he is long-haired
22 and the next day it is short. It was pretty much what
23 he had to cut his hair for.

24 Q What did he say?

25 A He never admitted it as such, but then he was gone for

two weeks and came back.

2 Q Do you have any information as to where he went?

A He never told me. I was not that close friends. I
4 didn't see him every day.

5 Q You have information from other persons which led you
6 to believe that Mr. Hecht was driving a load?

7 A No, nobody ever actually told me it. Michael Hauser
8 never told me that so-and-so did this and that.

9 Q Do you know where Mr. Hecht is now?

10 A Living in Ithaca.

11 Q Does Mr. Wishner live in Ithaca also?

12 A I don't know.

13 Q To the best of your knowledge, Mr. Hauser is also living
14 in Ithaca?

15 A Yes.

16 Q In addition to Mr. Hecht, or other than Mr. Hecht, do
17 you have information or direct knowledge that anybody
18 was engaged by either Hauser or Wishner to drive a load
19 or haul a load?

20 A No.

21 Q Directing your attention to the 28th of September, 1974,
22 you said you got on a Greyhound bus and came back to New
23 York State?

24 A Yes.

25 Q Describe the circumstances of your arrival in New York

1 State?

2 A When I got into the Ithaca bus station, Hauser was wait-
3 ing for me. I think I called a friend of mine before-
4 hand

5 Q You say Mr. Hauser was at the bus station when you
6 returned?

7 A Yes.

8 Q So he must have known that you were coming on that bus?

9 A Yes.

10 Q Do you know how he knew that?

11 A One of the stops in New York City, I must have called in
12 and told him--I think--I don't remember this well--I
13 didn't have a car--I said, "Will you meet me. I want
14 somebody up there when I come back."

15 Q What happened after you got off the bus?

16 A Obviously there was an interview. He had sent me out
17 with a car with twenty-five thousand dollars in it, and
18 I came back with nothing. It was more or less, "what
19 happened? What happened to the money? What happened
20 to the car? Did you tell the police anything?"

21 Q And did you explain what happened in New Mexico?

22 A Yes.

23 Q Included in your information, did you tell Mr. Hauser
24 the police had recovered the slip of paper?

25 A Yes.

1 Q Did you also tell him that the police had called the
2 phone number for Kevin?

3 A Yes.

4 Q What did Mr. Hauser have to say? Do you recall anything
5 specific?

6 A Nothing specifically. I told him, but it didn't seem
7 to register as anything noteworthy. There was really
8 nothing said at that instance.

9 Q Did there come a time when you saw Mr. Hauser again and
10 engaged with him in conversation concerning this trans-
11 action?

12 A A couple of times, yes.

13 Q What was the substance of your conversation with Mr.
14 Hauser?

15 A At that point it was being impressed on me that Michael
16 Hauser wanted to remain as anonymous as possible, and
17 if anybody asked questions I should not tell them any-
18 thing.

19 Q Did he say that to you, that you should remain silent?

20 A Yes. He said, "I sure as heck wish you wouldn't tell
21 anybody what the last name of Michael was that was on
22 the slip of paper."

23 Q But he didn't tell you who Kevin was?

24 A No.

25 Q Did you ever learn who Kevin was?

1 A No, I have not.

2 Q Concerning your arrival back in Ithaca, New York, did
3 you tell any lawyer anything about the problem of the
4 twenty-five thousand dollars?

5 A Yes.

6 Q What did you say?

7 A A month later I called Mr. Kerrigan, a lawyer. I got
8 served with a lawsuit of some sort from New Mexico which
9 I think in effect said, "What are you going to do with
10 this car or the twenty-five thousand dollars which was
11 confiscated from me." The State was trying to find out
12 what in effect was going to be done about it.

13 Q Does the name Oppordoch mean anything to you?

14 A Yes. Out there I saw a man named Jerry Oppordoch. I
15 think he was a lawyer employed by someone to recover the
16 money.

17 Q Are you aware that your name was on the affidavit that
18 Mr. Oppordoch filed to recover the twenty-five thousand
19 dollars out in New Mexico?

20 A I don't know specifically what mechanics he did. I spoke
21 to a lawyer in Ithaca. The idea was to surrender my
22 rights.

23 Q Do you know to whom you were supposed to surrender those
24 rights?

25 A No.

1 Q Did Mr. Oppordoch ever call you on the telephone?

2 A No.

3 Q Did you send an affidavit indicating to whom those rights
4 were to be surrendered?

5 A Mr. Kerrigan, the lawyer representing me at that time,
6 went into this surrendering of rights, but the specifics
7 I was never told about.

8 Q Do you know what became of the twenty-five thousand
9 dollars?

10 A No, I don't.

11 Q Did you ever receive the twenty-five thousand dollars
12 back?

13 A No.

14 Q In recent months or weeks, have you received any word,
15 message, telegram or check from Mr. Oppordoch?

16 A No, I have not.

17 Q Do you know of any persons involved other than you and
18 Hecht involved in this so-called company of people that
19 you referred to who based on your observation of them,
20 who would have information concerning the shipments of
21 marijuana that you described?

22 A No.

23 Q Do you know whether anybody has knowledge of Mr. Hauser
24 being involved in the transportation of large quantities
25 of marijuana to Ithaca, New York?

1 A No, I don't.

2 Q Do you know the names of any persons other than Mr.
3 Hecht who knew specifically of Mr. Hauser's or Mr.
4 Wishner's operations in Ithaca, New York?

5 A No.

6 Q How many times did you see Mr. Hauser after your arrival
7 back in 1974?

8 A After the first time in '74, there was one or two,
9 probably in November, after which all things were handled
10 by Mr. Kerrigan, and Hauser had employed a lawyer, so
11 I didn't have anything to do with Hauser except a week
12 ago.

13 Q What was the substance of your meeting a week ago?

14 A I was lying in bed. There was a knock at the door. He
15 approached me saying, "This thing"--I forget his exact
16 words--he kind of surprised me really--he said, "Don't
17 be freaked out if you get a subpoena to testify to a
18 Grand Jury." That pretty much was the substance of the
19 conversation.

20 Q What did he do after that?

21 A He left.

22 Q But was there nothing said other than the statement you
23 just made to the Grand Jury?

24 A No.

25 Q Did he make any statements to you concerning Kevin?

1 A No.

2 Q Did you ask him why he thought you might be freaked out
3 by getting a subpoena?

4 A I didn't ask him. He pretty much told me, "If you
5 remain silent or say as little as possible what happened
6 out west, you won't be in trouble."

7 Q Did he tell you how he knew you were getting a subpoena?

8 A No. At that time I had already gotten one. I was up
9 here three or four weeks ago. I had been subpoenaed,
10 and it was suggested that I don't contact anybody involved
11 with the situation, and I didn't.

12 Q Who made that suggestion to you?

13 A You did.

14 Q After that suggestion was made, did you contact anyone
15 other than your lawyer?

16 A No.

17 Q Do you know if Mr. Hauser engaged the same law firm that
18 you engaged?

19 A No, he didn't.

20 Q To handle his legal problems?

21 A No.

22 Q So you had no information from him as to how he knew you
23 were going to be called before the Grand Jury?

24 A No.

25 BY THE JURY:

1 Q Who is your lawyer now, Kerrigan?

2 A Yes.

3 BY MR. DREYER:

4 Q That is Mr. James Kerrigan of Ithaca, New York?

5 A Yes.

6 Q Directing your attention to the time prior to September
7 1974, you ever have occasion to drive to Tuscon,
8 Arizona, prior to September 1974?

9 A No.

10 Q Were you ever in Tuscon, Arizona, prior to September
11 1974?

12 A No.

13 Q Do you know a man named Kevin Cooney?

14 A No, I don't.

15 Q Do you know a person by the name of Christine Cooney?

16 A No.

17 Q In addition to driving, you ever go to points west prior
18 to September 1974, for the purpose of engaging in a
19 delivery of marijuana?

20 A No, I didn't.

21 Q For the purpose of picking up marijuana?

22 A No, I didn't.

23 Q Is it your testimony that you were entrusted with the
24 twenty-five thousand dollars on or prior to the 27th
25 of September, 1974, without being told what the twenty-

- 1 five thousand dollars was for; is that correct?
- 2 A Yes.
- 3 Q And you were not told the amount at that time?
- 4 A That's right.
- 5 Q After your incident in New Mexico, you ever go to Tuscon?
- 6 A No.
- 7 Q After September 1974, did you ever travel out west?
- 8 A No.
- 9 Q After September 1974 or before 1974, did you go to any
- 10 other locations, the Virgin Islands, Mexico, or other
- 11 locations, to pick up or deliver marijuana?
- 12 A No.
- 13 Q Did you have any business with Mr. Hauser concerning
- 14 delivering or picking up marijuana after September 1974?
- 15 A No. The only trip I made out west was a sightseeing
- 16 trip to Minnesota. I was thinking of moving out there.
- 17 Q You said before you had no connections with any college
- 18 in the Albany-Troy-Schenectady area?
- 19 A That is correct.
- 20 Q Have you ever been in Albany before?
- 21 A Not previous to this with the Grand Jury.
- 22 Q Never been in Albany before?
- 23 A Once, three weeks ago.
- 24 Q Before that?
- 25 A Yes. A friend of mine named George Coates lives in

1 Schenectady and I visited him.

2 Q Are you familiar with Latham, New York?

3 A I think I heard the name in regard to a high school, but
4 I am not familiar with it.

5 Q You have been in Schenectady, have you not?

6 A Yes.

7 Q What other areas around here have you been in other than
8 Schenectady, New York?

9 A I am not sure. That is it.

10 Q Did Mr. Hauser ever mention to you whether his dealings
11 in marijuana involved any persons in the Albany, New
12 York area?

13 A No, sir.

14 Q Binghamton, New York?

15 A No, sir.

16 Q Elmira, New York?

17 A I was not treated to the specific information.

18 Q You said it was a year prior to September 1974, when you
19 had been offered a thousand dollars. Did you accept the
20 offer at that time?

21 A No.

22 Q Why did you not accept it?

23 A It was more or less think about it and come back and tell
24 me if you will do it. The way it was put, I never went
25 back to see him. I saw him on the street a month after

1 and said, "Listen, I won't do this" and he at that time
2 I think said, "Forget it" or something like that.

3 Q You also said in 1971, Mr. Hauser said there was an
4 opportunity to make money?

5 A Prior to '74?

6 Q In 1971, Mr. Hauser approached you and said there was
7 a chance to make some money?

8 A Yes.

9 Q Did he tell you that the money would be derived only
10 from selling marijuana?

11 A That was our understanding, drugs.

12 Q He ever indicate to you at any time that other drugs
13 were available?

14 A No, he didn't.

15 Q When you arrived in Ithaca from New Mexico, after being
16 stopped in New Mexico, did Mr. Hauser ever tell you that
17 he was going to call this person Kevin and tell him what
18 had happened?

19 A No, I had already told him what had happened. No, he
20 never really said that to me.

21 Q He ever indicate to you that he knew this person Kevin?

22 A Yes, I would say yes, he must have indicated it some-
23 where along the line.

24 Q Speak up so the jurors can hear you.

25 A I think the indication is that he knew him. I can't

1 say how, but I thought it was fairly obvious that he
2 knew him to give me the phone number.

3 Q And it is your recollection when the phone call was
4 made by the agent for you in Tuscon, that the person
5 responded by saying, "Michael's Andy?" Is that correct?

6 A Yes.

7 Q Do you know Buddy Levy?

8 A No.

9 Q Harold Levy?

10 A No.

11 Q John LeFevre?

12 A No.

13 Q John Tibbetts?

14 A No.

15 Q Ellen Kaplan?

16 A No.

17 Q William Katz?

18 A No.

19 Q Curtis Ponzi?

20 A No.

21 Q Myron Cohn?

22 A No.

23 MR. DREYER: I have no further questions
24 for this witness.

25 THE FOREMAN: Anybody else?

1

(No response).

2

MR. DREYER: Thank you, Mr. Blossy. You
are excused and are instructed not to discuss
your testimony before the Grand Jury with any
persons. Thank you.

5

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(Witness excused).

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R E P O R T E R ' S C E R T I F I C A T I O N

I, F. ROBERT JORDAN, Official Grand Jury
Reporter for the Northern District of New York,
do certify that the foregoing is a true and accurate
transcription of the stenographic notes as taken by
me during the aforesaid proceedings.

F. Robert Jordan

Official Grand Jury Reporter

June 28, 1976

Albany, New York

74a
D.E.A. Report of Investigation - Defendant's
Exhibit D for Identification.

REPORT OF INVESTIGATION

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FILE TITLE COONEY, Kevin Thomas, et al.		IDENTIFIER DC6-11	FILE NUMBER C7-75-0027 (G.44)
☒ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED ☐ ACTION REQUESTED FROM:		PROGRAM CODE 	
BY S/A Raymond W. Tripp AT Albany, New York DATE May 20, 1976		OTHER OFFICERS DEFENDANT'S EXHIBIT <i>id</i>	
REPORT RE: DEBRIEFING OF WILLIAM KATZ ON 5-19-76.		CROSS FILE RELATED FILE ☐ GF: COONEY, Kevin T. ☐ GF: BLOOSY, Andrew J. ☐ ☐ ☐	

DETAILS:

1. On 4-15-76, William KATZ pled guilty to charges before Judge James T. Foley in the Northern District of New York, Albany, New York.
2. On 5-19-76, William KATZ was interviewed by AUSA William Dreyer and S/A Raymond Tripp at the U.S. Attorney's Office, Albany, New York relative to the Kevin COONEY organization. KATZ was granted informal immunity by AUSA Dreyer from any further prosecution prior to the on start of the interview.
3. KATZ advised that he first met Harold LEVY in the latter part of 1969 and met Kevin COONEY during the early months of 1970 in Albany, New York. KATZ knew COONEY and LEVY, at that time, to be involved in the local selling of small quantities of marijuana. Sometime around September of 1971, KATZ learned that COONEY was making plans to establish a narcotic trafficking organization, to be based in Tucson, Arizona. KATZ further learned that COONEY moved from the Albany area to Tucson during the summer of 1972.
4. KATZ learned from Marc COHEN that COHEN transported the first load of marijuana for COONEY from Tucson to Albany and delivered a load of approximately 200 pounds to LEVY at 85 Old Loudon Road, Latham, New York during September of 1972. KATZ observed some of this marijuana in either November or December of 1972 in the upstairs bedroom of 85 Old Loudon Road, Latham, New York.

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REGION 2 DISTRICT Tucson OTHER IQS-IG	SIGNATURE (Agent) <i>Raymond W. Tripp</i> Raymond W. Tripp - Special Agent APPROVED (Name and title) <i>Lon W. Sturrock</i> Lon W. Sturrock - SAIC
	DATE 7-1-76

DEA Form -6 57-5-21-76
(Aug. 1973)

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REPORT OF INVESTIGATION

(Continuation)

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FILE TITLE

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5. During March or April of 1973, Marc COHEN transported approximately 300 pounds of marijuana for COONEY and attempted to temporarily store it at KATZ'S residence, Morris Street, Albany, New York, since COHEN was unable to locate LEVY. KATZ alleges he rejected the idea and that COHEN subsequently located LEVY and delivered the marijuana to him.
6. KATZ alleges LEVY approached him to transport a load of marijuana for COONEY from Tucson to LEVY in Albany. KATZ transported the marijuana sometime during May of 1973 and was paid \$1,400.00 cash by LEVY. Prior to KATZ leaving Albany, LEVY advised him there was \$30,000.00 in the trunk of the vehicle that was to be delivered to COONEY. However, KATZ states he never physically checked to see if the \$30,000.00 was in the trunk of the vehicle. When KATZ arrived near Tucson, he telephoned COONEY with a telephone number supplied by LEVY. COONEY subsequently met KATZ and took possession of the vehicle. KATZ alleges that he observed COONEY'S stash of marijuana to be located in a two-family house, which COONEY rented under the assumed name of CONWAY.
7. KATZ states that Marc COHEN transported one other load of marijuana, but cannot recall the date this took place. However, it took place sometime between KATZ'S shipment in May of 1973 and his second and last shipment of August 1973. In August of 1973, KATZ transported approximately 350 pounds of marijuana from COONEY in Tucson to LEVY in Crescent, New York. KATZ advises that he was paid \$1,500.00 in marijuana by LEVY for his service.
8. KATZ further said that Bruce KAY and Sondra HUNT became the principal couriers for COONEY beginning with the fall of 1973. In addition, KAY was often assisted by Joan FLEISHER (KAY'S present wife). KATZ specifically recalls that KAY delivered a load of 650 pounds of marijuana in a camper pick-up truck during February or April of 1974 to LEVY in Crescent, New York.
9. KATZ alleges that Christine COONEY was not a participant in COONEY'S operation. (However, this is in direct contradiction to statements supplied by other witnesses.) Additionally, KATZ states that although

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Sandra BROOKS did participate, she did so reluctantly and only because she was married to Harold LEVY. KATZ contends that this dispute eventually led to their divorce.

10. KATZ states that COONEY'S operation was directed towards Albany, Ithaca and Buffalo, New York; Chicago, Illinois, and Colorado. Additionally, pound quantities of heroin and cocaine were delivered by John LEFEBVRE to the New York City, Philadelphia and New Jersey areas for Kevin COONEY. In Ithaca, New York, the operation was headed by Martin WISNER. KATZ contends that between September of 1972 and April of 1975, approximately 15,000 pounds of marijuana was delivered to LEVY in Albany, New York, and that approximately 25,000 to 35,000 pounds of marijuana was delivered to WISNER in Ithaca, New York. KATZ further states that a Tony LNU and Michael LNU were actively involved with WISNER in the operation in Ithaca.
11. In the early months of 1974, John LEFEBVRE moved to Tucson, Arizona so that he could be closer to Kevin COONEY. It was subsequent to this that LEFEBVRE began supplying pound quantities of heroin and cocaine.
12. Cathi HESSION was a distributor of marijuana for Harold LEVY in Albany, New York, in addition to which, during part of 1974, Cathi HESSION went to Tucson, Arizona and personally assisted COONEY with the operation.
13. KATZ has identified an additional courier of COONEY'S to be Thomas JENNINGS, formerly of Saratoga, New York, and now a resident of Vermont.
14. KATZ contends that LEVY received his last shipment of marijuana in April of 1975. Subsequently, Bruce KAY took over this end of the operation. KAY based himself in Vermont and supplied the Vermont and Albany, New York areas.
15. KATZ has confirmed that LEVY is the owner of a 35-38 foot Viking Boat, valued at approximately \$40,000.00 which is moored in Miami, Florida. LEVY purchased this boat from his profits derived from his participation in COONEY'S organization.

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16. The following is a partial breakdown of COONEY'S organization:

MEXICO

:

TUCSON

Cooney

:

COLORADO

CHICAGO

BUFFALO

ITHACA

ALBANY

Wishner

Levy/Kay

:

:

Hauser

Roth

Tony LNU

Berny

Michael LNU

Kay

Katz

Moskowitz

Lefebvre

Bession

KATZ states that he generally purchased half of LEVY'S marijuana shipments and subsequently distributed his marijuana to the following:

Curtis POWRI	50-100 pounds	(average)
Ralph CLICK	25-50 pounds	(average)
John TILBERT	2-2 pounds	(average)
Paul CAMISO	50-200 pounds	(average)
Richard BESSING	25-50 pounds	(average)

Paul CAMISO sold his marijuana to Thomas PICCARILLO and John NICCOLO and John LEFEBVRE sold his marijuana to Marc COONEY, Alan LNU and sometimes to Cathi BESSION and friends of Cathi BESSION.

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17. KATZ states that COONEY'S marihuana was delivered to him by Mexicans utilizing false bottom/flat bed trucks. COONEY purchased the marihuana by the ton and only paid for it subsequent to the successful delivery by the Mexicans. KATZ further states that COONEY and LEVY split expenses and losses on a 50-50 basis. COONEY alleged to LEVY that he paid \$65.00 per pound for the marihuana (KATZ believes that \$35.00 per pound is more accurate) and that LEVY was to sell the marihuana for approximately \$110.00 to \$125.00 per pound. Therefore, KATZ assumes, based on the aforementioned statistics that COONEY made \$50.00 and LEVY made \$25.00 on every pound of marihuana that was successfully delivered. (The Tucson District Office has advised that between 1972 and 1974, the average price paid for a pound of marihuana delivered from Mexico to Tucson was approximately \$30.00 to \$40.00 per pound).
18. This report is in essence a concise summary of information supplied by KATZ during the interview. This report has neither been shown to KATZ nor adopted by him.

PHYSICAL DESCRIPTIONS:

1. COONEY, ~~Kevin Thomas~~, aka COONEY; NADDIS No. 246239.
2. COONEY, ~~Christine H.~~; NADDIS No. 283792.
3. LEVY, ~~Harold J.~~; NADDIS No. 367043, 364796.
4. KATZ, ~~William Carroll~~; NADDIS No. 361903, 366254, 368117.
5. COHEN, ~~Marc~~; NADDIS No. 365344.
6. KAY, ~~Bruce~~; NADDIS No. 364206.
7. HUNT, ~~Sandra Louise~~; NADDIS No. 365930.
8. BROOKS, ~~Sandra Marie~~; NADDIS No. 365997.
9. LEFEBVRE, ~~John David~~; NADDIS No. 365009, 367196.

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10. HESSIGN, Cathi Anne; NADDIS No. 358691.
11. BERNY, Myron H.; NADDIS No. 312019.
12. PONZI, Curtis Richard; NADDIS No. 375528.
13. CLICK, Ralph Michael; NADDIS No. 420996.
14. TIBBETTS, John R.; NADDIS No. 375959.
15. CAMERO, Paul; NADDIS No. 409769.
16. HESSING, Richard B.; NADDIS No. 464338.
17. WISNER, Martin, aka Marty; DOB 4-1-49. Formerly resides at Ithaca, New York. Has New York State Police Arrest No. 28393. No further data available at this time. No NADDIS No.
18. JERINGS, Thomas; No NADDIS No. Believed to be currently residing in Vermont. No further data available at this time.
19. KAY, Joan nee FLKISHER; No NADDIS No. Wife of Bruce KAY. No further information available.
20. PICCAFELLO, Thomas; No NADDIS No. White male, 5'9", 180 lbs., with black short hair. About 23 years of age.
21. NICOTO, John; No NADDIS No. White male, 6', 185 pounds, with black curly hair. About 25 years of age.

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EXCERPTS FROM DIRECT AND CROSS-EXAMINATION
OF MICHAEL HAUSER

1 MICHAEL HAUSER,
2 having been called as a witness in behalf of
3 the Government, was first duly sworn according to
4 law and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DREYER:

7 Q Mr. Hauser, where do you live?

8 A New York City.

9 Q And how long have you lived there?

10 A About four months.

11 THE COURT: Speak up.

12 A About four months.

13 Q Now, I direct your attention to September of 1974.
14 Where did you live in September of 1976?

15 A Ithaca, New York.

16 Q Did you live with someone or by yourself?

17 A I lived with someone.

18 Q Can you tell us his name?

19 A It was my girlfriend.

20 Q Now --

21 THE COURT: Speak up, please. The
22 jurors have to hear you and the lawyers have to hear.
23 Speak right up.

24 Q Did there come a time, in September of 1974, when you
25 met a man by the name of Andrew Blossy?

1 A Yes.

2 Q How long had you known Mr. Blossy prior to 1974?

3 A For about six years.

4 Q And do you recall when you met him in September of
5 1974, the approximate date?

6 A It was the middle of the month.

7 Q And do you recall where you met him?

8 A At my house.

9 Q And can you tell the members of the jury for what
10 purpose you met Mr. Blossy at your house?

11 A He was to drive an automobile for me.

12 Q Now, do you recall the meeting? Do you have a
13 picture in your mind of meeting with Mr. Blossy?

14 A Yes.

15 Q What did you tell him and what did he say to you?

16 A I asked him to drive a car for me and take some money,
17 and he said he would.

18 Q Now --

19 MR. RYAN: I am sorry. Where did this
20 occur?

21 MR. DREYER: At his house.

22 MR. RYAN: In Ithaca?

23 MR. DREYER: Yes.

24 BY MR. DREYER:

25 Q Do you recall the address?

1 A Yes. It was 5 Hallwood Drive.

2 Q Now, how soon after Mr. Blossy responded that he would
3 drive did he leave the Ithaca area, or did there come
4 a time when he did leave?

5 A He left the next day.

6 Q Prior to his leaving, did you give him some
7 instructions?

8 A I told him to drive to Arizona. I told him the routes
9 and to make a phone call when he got there, and then
10 to fly home.

11 Q Now, regarding the phone call, did you give him some
12 instructions concerning a telephone number?

13 A I gave him a number.

14 Q What was the number, do you recall?

15 A No.

16 Q Do you recall whose phone number you gave him?

17 A Yes.

18 Q Whose phone number?

19 A It was Kevin's; Kevin Cooney.

20 Q Now, in addition to the phone number that you gave to
21 Mr. Blossy, did you give him anything else?

22 A Two suitcases.

23 Q Can you describe the suitcases that you gave him?

24 A They were large suitcases.

25 Q And did you put anything inside of those suitcases?

1 A No.

2 Q Did you give him anything in addition to those suit-
3 cases?

4 A Money.

5 Q Do you recall how much money?

6 A 25,000.

7 Q Now, did you give him anything else?

8 A No.

9 Q Did you give him an automobile or did he use his own?

10 A I gave him an automobile.

11 Q Whose automobile did you give him?

12 A It was a man named Richard Cihocki.

13 Q In addition to the phone number that you gave to --
14 did you give Mr. Blossy any other phone numbers in
15 addition to the one?

16 A My own.

17 Q You gave him your own?

18 A Yes.

19 Q Was the telephone registered in your own name?

20 A No, I believe it was registered in my girlfriend's
21 name.

22 Q Now, did there come a time when you saw Andrew Blossy
23 again?

24 A Yes.

25 Q When did you see him again?

1 A About a week later.

2 Q And where did you see him?

3 A In Ithaca.

4 Q And under what circumstances did you see him?

5 A I picked him up at the bus station.

6 Q And did he tell you something at that time?

7 A Yes.

8 Q Would you tell us what he told you? Did you do some-
9 thing in response to his statement to you?

10 A No.

11 Q Did there come a time when you spoke to a Mr. Kevin
12 Cooney?

13 MR. LOMBARDINO: I object to it.

14 Leading.

15 Your Honor, may I have a moment,
16 please, a telephone call from New York City to me, or
17 can I have Mr. Juliano --

18 THE COURT: Can somebody else take it?
19 Yes.

20 MR. LOMBARDINO: Thank you...

21 (Mr. Juliano leaves Courtroom).

22 MR. LOMBARDINO: Thank you, your Honor.

23 THE COURT: No, I overrule the
24 leading, he has just asked if he had a conversation
25 with Kevin Cooney.

1 Q After Mr. Blossy returned, did there come a time when
2 you spoke to Mr. Cooney?

3 A Yes.

4 Q Do you recall how soon after Mr. Blossy returned that
5 you spoke to Mr. Cooney?

6 A It was soon after, but I am not sure when.

7 THE COURT: Speak up now. --

8 A It was soon after.

9 Q And do you recall the conversation?

10 A No.

11 Q Do you remember what you said to Mr. Cooney?

12 MR. LOMBARDINO: I object. The witness
13 says he did not and Mr. Dreyer now presses him as
14 though he was cross-examining the witness, that he
15 does not remember the conversation.

16 THE COURT: No, I think first you should
17 fix the time of conversation. How did it occur? I
18 do not know whether it is a telephone call or --

19 BY MR. DREYER:

20 Q Did you have a telephone conversation with Mr. Cooney?

21 A Yes.

22 Q Again, how soon after Mr. Blossy returned?

23 A Relatively soon. I am not sure of the exact time.

24 Q Where were you when the phone conversation took place?

25 A In Ithaca..

1 Q In Ithaca?

2 A Yes.

3 THE COURT: Did you call him up?

4 THE WITNESS: Yes, I did.

5 THE COURT: All right.

6 BY MR. DREYER:

7 Q And when you called him up, what did you say to him?

8 A I don't remember.

9 Q Do you remember what he said to you?

10 A No, I don't.

11 Q Now, directing your attention to the money that you
12 gave him, can you tell the members of the jury who
13 owned that money?

14 A Me.

15 THE COURT: Did you say it is your
16 money?

17 THE WITNESS: Yes.

18 THE COURT: \$25,000?

19 THE WITNESS: That's correct.

20 THE COURT: Was it cash?

21 THE WITNESS: Yes, it was.

22 BY MR. DREYER:

23 Q Now, at the time you gave the -- strike that. Where
24 did you get the money from, Mr. Hauser?

25 MR. LOMBARDINO: I object.

1 THE COURT: Overruled.

2 BY MR. DREYER:

3 A I sold marijuana.

4 Q And how soon before you gave it to Mr. Blossy did you
5 accumulate the \$25,000?

6 MR. LOMBARDINO: I object.

7 THE COURT: Overruled.

8 BY MR. DREYER:

9 A It was over a period of about a year..

10 Q Now, when you sent Mr. Blossy to Arizona with the
11 \$25,000 -- strike that.

12 THE COURT: I do not think that is
13 what he said.

14 MR. DREYER: Pardon?

15 THE COURT: Did he say he sent him --

16 MR. DREYER: I just struck my question.

17 THE COURT: All right.

18 BY MR. DREYER:

19 Q And when you gave Mr. Andrew Blossy the money, did you
20 tell him for what purpose the money was being sent to
21 Arizona?

22 A No.

23 Q Did there come a time, prior to your sending the money
24 to Arizona, through Mr. Blossy, that you had a
25 conversation with anybody concerning the use of that

1 money?

2 MR. LOMBARDINO: Your Honor, I object
3 to the form of the question.

4 THE COURT: Read the question.

5 (The pending question was read back
6 by the Reporter).

7 THE COURT: Overruled.

8 MR. LOMBARDINO: Your Honor, I submit
9 there are two questions in one there.

10 THE COURT: Overruled. If he cannot
11 answer, he can tell us.

12 Would you repeat the question, please.

13 MR. DREYER: Let me rephrase the
14 question to save time.

15 THE COURT: All right.

16 BY MR. DREYER:

17 Q Prior to sending Andrew Blossy to Tucson, Arizona, or
18 Arizona, did you have a conversation with anyone
19 concerning the use of that money?

20 A I really don't remember in particular.

21 Q Prior to sending Mr. Blossy to Arizona, did you have
22 a telephone conversation with Mr. Cooney?

23 A Yes.

24 Q And can you tell us when that conversation took place?

25 A No, I can't.

1 Q Do you recall what you told Mr. Cooney? ..

2 A No, I can't.

3 Q To the best of your knowledge, did Mr. Cooney know
4 Mr. Blossy was going to be in Arizona?

5 MR. LOMBARDINO: I object to that,
6 your Honor. How could this witness possibly answer a
7 question like that as to someone else's state of mind?

8 THE COURT: All right. I sustain it,
9 but I think it can be developed other ways, to
10 keep it clear to the jury and me.

11 MR. DREYER: Your Honor, obviously
12 there are leading questions.

13 MR. RYAN: No statements.

14 THE COURT: I appreciate that, but just
15 ask the questions.

16 BY MR. DREYER:

17 Q Did there come a time, prior to you sending Andrew
18 Blossy to Tucson, when you spoke to Kevin Cooney on
19 the phone --

20 A Yes?

21 MR. LOMBARDINO: Your Honor, I am sorry.
22 I did not hear Mr. Dreyer's questions. He is a little
23 too close to the witness.

24 BY MR. DREYER:

25 Q Prior to your sending Andrew Blossy to Tucson, Arizona,

1 did you speak with Mr. Cooney on the phone?

2 A Yes.

3 Q Do you recall the conversation?

4 A No.

5 Q Do you recall mentioning Andrew Blossy to him?

6 A No.

7 Q Do you recall mentioning money to him?

8 A No.

9 Q Can you tell the members of the jury why you sent
10 \$25,000 to Kevin Cooney?

11 A It was being sent to buy marijuana for me.

12 MR. DREYER: Thank you. I have no
13 further questions, your Honor.

14 GROSS-EXAMINATION

15 BY MR. LOMBARDINO:

16 Q Mr. Hauser, prior to speaking with me this morning,
17 have you ever met and/or spoke with mr in your entire
18 life?

19 A No.

20 Q And, Mr. Hauser, you pleaded, did you nit, in this
21 particular case under Section 844B, do you recall
22 that?

23 A Yes.

24 Q And at the time you were represented by counsel, were
25 you not?

1 A Correct.

2 Q And were you told that the judgment of conviction would
3 would not be entered against you for a period to be
4 set by the court in the future, and that if you did
5 not violate any of the terms of the Probation
6 Department, this matter would be expunged?

7 A Yes.

8 Q Now, before coming to court and testifying today, Mr.
9 Hauser, were you told by someone that if you did not
10 come into court and testify, someone might put you in
11 jail?

12 A Yes.

13 Q And the last few days, have you been under an
14 emotional strain about the testimony?

15 A Yes, very much so.

16 Q Now, did you ever introduce Andrew Blossy to Kevin
17 Cooney?

18 A No.

19 Q And did Andrew Blossy ever tell you that he knew
20 Kevin?

21 A No.

22 Q And who bought the automobile that Mr. Blossy was
23 driving?

24 A I did.

25 Q And when you spoke to Mr. Blossy, did you ever tell

1 him the amount of money that was in the car?

2 A No.

3 Q Did you ever tell Mr. Blossy that he was going out
4 there to get marijuana?

5 A No.

6 Q Now, you testified that -- withdrawn. How long did
7 you have this car before Mr. Blossy drove it out to
8 Arizona?

9 A Oh, maybe two weeks.

10 Q To your knowledge, was there any -- was there ever a
11 quantity of marijauan in the back trunk of that
12 automobile?

13 A To my knowledge, there was nothing, but two empty
14 suitcases in the trunk of that automobile.

15 Q Now, did you ever smell an odor of marijuana coming out
16 of the back trunk of that automobile?

17 A No.

18 Q And these suitcases that you have told us about, did
19 they bear any initials?

20 A No.

21 Q And if someone testified in this Courtroom that those
22 suitcases had initials on them, would that be
23 inaccurate?

24 A They were lying.

25 Q Now, at the time when you gave the telephone number of

1 Kevin to Blossy, did you know what Kevin Cooney was
2 doing in the State of Arizona?

3 A He was going to law school.

4 Q And did you tell Mr. Blossy that, "On the way, if you
5 should have a problem, if you should break down, call
6 this friend of mine, Kevin Cooney"?

7 A Yes, he was told to either call him or call me.

8 Q Now, did you ever tell Blossy that when he gets to
9 Arizona, he should meet with Kevin Cooney?

10 A No.

11 Q Did Blossy ever know -- withdrawn. Did you ever tell
12 Blossy who he was going to meet when he got to
13 Arizona?

14 A No.

15 Q As a matter of fact, Mr. Blossy -- withdrawn. Do
16 you know how Mr. Blossy returned from Arizona to the
17 State of New York?

18 A I believe he took a bus. I picked him up at the bus
19 station.

20 Q Okay. Was he originally, pursuant to your conversa-
21 tion with Blossy, was he originally to come back by bus?

22 A No.

23 Q Was he going to drive back a load of marijuana?

24 A No.

25 Q How was he going to come back?

1 A He was going to get on the next airplane and fly back.

2 Q And do you know whether or not he had either an air-
3 line ticket to return or funds to return?

4 A He had funds.

5 Q And did Kevin Cooney give him the money to return?

6 A No.

7 Q Who gave him the money to return?

8 A I did.

9 THE COURT: I am not clear on this and
10 I think I should try to clarify it mainly for the
11 jurors.

12 Did you testify you gave \$25,000 to
13 Blossy?--

14 THE WITNESS: Correct.

15 THE COURT: -- in some form?

16 THE WITNESS: Correct.

17 THE COURT: And did you just hand it
18 to him in his hands?

19 THE WITNESS: No, I had it in the trunk
20 of the car.

21 THE COURT: Where?

22 THE WITNESS: In the trunk of the car.

23 THE COURT: Was this \$25,000 in cash in
24 the trunk?

25 THE WITNESS: Yes.

1 THE COURT: Open to be seen?

2 THE WITNESS: No, it was in a box
3 behind the spare tired.

4 THE COURT: And did Blossy know that?

5 THE WITNESS: He knew there was money
6 there, yes.

7 THE COURT: All right.

8 THE WITNESS: But he did not know how
9 much.

10 THE COURT: So what was to be done with
11 the car when it got out to Arizona?

12 THE WITNESS: He was to leave it and
13 come home.

14 THE COURT: Where, did you tell him?

15 THE WITNESS: That was up to him.

16 BY MR. LOMBARDINO:

17 Q Now, his Honor asked you about the money, the money
18 that you put in the back of this car. Was it ever
19 discovered and shown to Blossy?

20 A No.

21 Q So that Blossy did not know if there was \$25,000 there
22 or 25 cents there, wouldn't that be a fair statement,
23 Mr. Hauser?

24 A That would be correct.

25 Q And did Mr. Blossy tell you he had been arrested?

1 A Yes.

2 Q And how long -- withdrawn. Do you know the state he
3 was arrested in?

4 A New Mexico.

5 Q And how long did he stay in New Mexico after he was
6 arrested, if you know?

7 A I believe it was a day or two.

8 Q And did he ever tell you he escaped from the
9 authorities in New Mexico?

10 A He told me they let him go.

11 Q And did he tell you whether or not he ever spent one
12 minute in a county jail?

13 A He said no.

14 Q Did he tell you where he stood?

15 A They sent him for a motel and they told him they
16 would pick him up and they never showed.

17 Q Mr. Hauser, do you know any of the defendants at this
18 table?

19 A Yes.

20 Q How many of them do you know?

21 A Three.

22 Q And would it be fair to say that of the three
23 defendants, you know them socially?

24 A Yes.

25 Q And who would those three people be?

1 A Mr. Levy, Mr. Lefebvre and Mr. Cooney.

2 Q And Mr. Kay you do not know at all?

3 A Never met the man.

4 THE COURT: Who are they again, tell
5 the jury?

6 THE WITNESS: Mr. Cooney, Mr. Lefebvre
7 and Mr. Levy.

8 BY MR. LOMBARDINO:

9 Q Incidentally, these suitcases that were in the car,
10 did you do anything in regard, or with relation
11 to these suitcases before the car was driven out
12 there?

13 A Yes.

14 Q I would like you to tell his Honor and the jury what
15 did you do?

16 A I took them outside and I shook them out and I took
17 a vacuum cleaner and vacuumed the insides of the suit-
18 cases.

19 Q And when you were doing this, did you leave two ounces
20 of marijuana in that suitcase?

21 A That is totally impossible.

22 Q Sir?

23 A Totally impossible.

24 Q And was there an odor coming from the suitcases?

25 A As far as I know, no.

1 MR. LEBETKIN: I have no questions.

2 THE COURT: No questions. All right,

3 Mr. Leone?

4 MR. LEONE: On behalf of John Lefebvre,

5 I have no questions.

6 THE COURT: Mr. Ryan?

7 CROSS-EXAMINATION (continued)

8 BY MR. RYAN:

9 Q Did I understand you to say that you do not know
10 Bruce Kay?

11 A That's correct.

12 Q Did anyone ever mention the name Bruce Kay to you?

13 A No, never.

14 Q And I understood you to say that you had the conversa-
15 tion with Mr. Blossy in the Ithaca area?

16 A That's correct.

17 Q And you spend most of your time in the Ithaca area?

18 A That's where I live.

19 Q You live there?

20 A Up until four months ago.

21 Q And the marijuana you sold, you sold in the Ithaca
22 area?

23 A Totally.

24 Q Nothing to do with Albany, did it?

25 A Not -- I have been in Albany once in my life before

1 this.

2 MR. RYAN: Thank you. No further
3 questions.

4 MR. DREYER: Nothing on redirect.

5 THE COURT: All right. Thank you.
6 (Witness excused).

7 THE COURT: Next witness?

8 MR. DREYER: We will ask that the
9 witness be excused from the Courtroom, your Honor.

10 THE COURT: All right.

11 MR. DREYER: The Government calls
12 Charles Ring.

13 CHARLES RING,
14 having been called as a witness in behalf of
15 the Government, was first duly sworn according to
16 law and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DREYER:

19 Q Mr. Ring, what is your occupation?

20 A I am a sergeant with the New Mexico State Police
21 Narcotics Division.

22 Q Where are you employed?

23 A Las Cruces, New Mexico.

24 Q How long have you been employed with the New Mexico
25 State Police?

EXCERPTS FROM JURY DELIBERATIONS, POLLING
PROCESS, AND MOTION TO SET ASIDE VERDICT

1 (Whereupon, at 3:35 p.m., the following
2 proceedings took place before the Court.)

3 THE COURT: Make sure that everyone
4 is here, Frank.

5 THE CLERK: Yes, Your Honor.

6 THE COURT: Bring in the jury.

7 (Whereupon, the following proceedings
8 took place before the Court and the jury.)

9 THE COURT: All right, I am going to
10 speak to your Foreman.

11 Your note says, 'Wilbur Katz,' and I
12 think that you mean William Katz, and his testimony
13 regarding Bruce Kay pertaining to the camper.

14 The reason I brought you back in, I
15 wanted to find out if you have any particular part
16 of that testimony relating to the camper that your
17 people, the other jurors and yourself, recall?
18 It would be helpful, because I don't know where it
19 is in all of Katz' testimony, and it will be quite
20 substantial. What camper are you talking about, and
21 what incident, and can you give us a location?

22 FOREMAN CHOW: That was the time, the
23 alleged time that the camper was driven by the Defendant,
24 Bruce Kay, to unload -- or the camper was spotted at
25 the site of William Katz' house. Because -- it was

1 at Crescent. I guess that that was one incident at
2 Crescent.

3 The other time then, it was spotted
4 at Arlington, Vermont, I believe.

5 THE COURT: Those are the two incidents
6 involving the camper that you want the testimony read
7 about?

8 FOREMAN CHOW: Right.

9 THE COURT: Well, that gives us an idea,
10 and I am sure that the attorneys may be able to assist
11 our Court Reporter on locating the particular parts.

12 Don't you think you can do that, Mr. Ryan?

13 MR. RYAN: Yes.

14 I have talked to our Court Reporters about
15 those two references in Mr. Katz' testimony.

16 THE COURT: So we will have the Court
17 Reporters try and pick up those parts of the transcript,
18 and you may retire until he does so.

19 (Whereupon, the jury was excused at
20 3:38 p.m.)

21
22 (Whereupon, at 4:15 p.m., the following
23 proceedings took place before the Court.)

24 THE COURT: Mr. Ryan?

25 MR. RYAN: Judge, we have gone over

1 the notes of Katz' testimony, and we have agreed as
2 to what portions will be read. It is very short,
3 and it is in the direct examination of Mr. Katz.

4 My cross examination was directed at
5 a related conversation to the white camper between Katz
6 and my client, concerning cutting Levy out, and taking
7 over Cooney. And that is not part of the request.
8 We have picked out the portion we think answers the
9 jury's question, and it only deals with the Catskill
10 Street incident.

11 THE COURT: That will be helpful.

12 Are you agreed, Mr. Dreyer?

13 MR. DREYER: Yes.

14 THE COURT: Mr. Lombardino, are you
15 agreed?

16 MR. LOMBARDINO: Yes. It doesn't affect
17 my client, but I have agreed with Mr. Ryan and Mr.
18 Dreyer as to what is going to be read back.

19 THE COURT: Mr. Lebetkin?

20 MR. LEBETKIN: Since it is limited to
21 the camper, I agree.

22 MR. LEONE: I have no objection, Your
23 Honor.

24 THE COURT: I appreciate this very much,
25 because as you know, this helps our Court Reporters

1 find particular parts that the jury may be interested
2 in, and bring in the jury.

3 (Whereupon, the jury was returned to
4 the Courtroom.)

5 THE COURT: All right, Ladies and Gentlemen,
6 the attorneys have gone over the parts of the transcript
7 with the Court Reporters that they think that you want
8 read from the question that you had. It is a very
9 commendable attitude, so I believe now our Court Reporter
10 will read these particular portions to you.

11 (Whereupon, a portion of Mr. Katz'
12 direct examination, relating to the white camper,
13 agreed upon by all Counsel, was read to the jury by
14 the Court Reporter.)

15 THE COURT: Now, Mr. Chow, are you
16 satisfied that we have covered or read to you the
17 parts that you wanted?

18 FOREMAN CHOW: Yes, sir.

19 THE COURT: Do you have anything else
20 in mind?

21 I am going to ask you, Mr. Chow, is
22 there anything further that you think that you might
23 need to assist you, in the way of Exhibits, or other
24 testimony, because if you do, it would be a good time
25 now to tell us? Do you have anything in mind as yet?

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FOREMAN CHOW: No.

JUROR NO. 9 (JANKOVIC): Did you get
our last note? The testimony about fixing the plumbing?

THE COURT: Would you stand up please?

JUROR NO. 9 (JANKOVIC): This is the
testimony where they said that they were fixing the
plumbing on Mr. Levy's house, and they brought the load
to Mr. Katz' house.

THE COURT: I don't know. The lawyers
would know more about that.

MR. DREYER: May we have a side-bar?

THE COURT: Yes.

(Whereupon, the following took place
at the side-bar, out of the hearing of the jury)

MR. DREYER: Now, Your Honor, I requested
this side-bar because when the Court Reporter read
back the questions, he left out a conversation between
Mr. Katz and Mr. Levy in which Mr. Levy explained to
Mr. Katz that he wanted to bring the load of Marijuana
over because there were repairs being done at his house.
We agreed at that time that the jury, apparently did
not want to hear that. But now it is the Government's
intention that they wanted to hear that, and I request
that it be read back.

I think that is what they want.

1 to hear about Mr. Cooney and the law school, but the
2 conversation that Mr. Cooney had concerning the Marijuana,
3 and Mr. Levy.

4 MR. LOMBARDINO: If that is the case,
5 then I feel that we have a corresponding right to examine
6 the record on cross examination to see what was elicited
7 to contradict that testimony. But the note is somewhat
8 ambiguous, and I am not trying to defeat the Court, but
9 the note is not that clear.

10 THE COURT: I will inquire, and straighten
11 that part out.

12 What about the other one?

13 MR. DREYER: There is no problem on
14 Moscovitz. That is ready to go.

15 But the direct testimony on the
16 conversation with Roth and Cooney will take five
17 minutes to read in its entirety.

18 THE COURT: Why not Moscovitz first,
19 and then go ahead?

20 MR. LOMBARDINO: That is a good idea.

21 THE COURT: We will take Moscovitz first.

22 (Whereupon, the jury was returned to
23 the Courtroom and the following proceedings took place
24 before the Court and the jury.)

25 THE COURT: Ladies and Gentlemen, first

1 we are going to read to you the testimony that the
2 attorneys and the Court have gone over that involves
3 Moscovitz' testimony, and on Kay concerning the
4 unloading from under the bed in the camper. That
5 is the wording of the note that was given to us.

6 We are going to start with that testimony.

7 (Whereupon, the testimony was read by
8 the Court Reporter.)

9 THE COURT: Now, Mr. Chow, I am going
10 to ask you some questions about the Roth testimony
11 of the meeting involving the Cooney's moving to Arizona.
12 The attorneys think that we need some clarification
13 and is that your own handwritten note?

14 FOREMAN CHOW: No, that was our thinking,
15 but it was written by Judith Earl here, and we were
16 trying, at one point, and I guess that the jury would
17 like to hear, Your Honor, after the Cooneys left to
18 Arizona, there was -- before he left there, there was
19 some meeting between Mr. Roth and Mr. Levy and Mr. Cooney
20 about the future activities. That is the part that
21 the jury would like to hear.

22 THE COURT: Do you have any idea how
23 much that involves?

24 FOREMAN CHOW: Very short, sir. Very,
25 very short.

1 THE COURT: Will you know whether it
2 was developed on direct examination or not?

3 FOREMAN CHOW: I think it was.

4 THE COURT: That is the examination
5 by Mr. Dreyer?

6 FOREMAN CHOW: Yes, by Mr. Dreyer.

7 THE COURT: And the question we have
8 is whether there is some pursuit along that same subject
9 on cross examination about things that took place out
10 in Arizona, that Roth talked about or is it only that
11 first part that we are looking for?

12 FOREMAN CHOW: The first part we were
13 looking for.

14 THE COURT: We will first read that,
15 and then you will listen, and see if there is anything
16 further that you think you want.

17 (Whereupon, the Court Reporter read
18 testimony of Mr. Roth.)

19 THE COURT: Now, is that what you wanted
20 Ladies and Gentlemen, and are you satisfied now?

21 FOREMAN CHOW: I guess that the Jurors
22 would like to hear the redirect by Mr. Lombardino on
23 that.

24 THE COURT: Do you mean the cross
25 examination?

1 to ask, Mr. Chow, and we had some question about the
2 jurors as to whether you were satisfied, and do you
3 remember when we reread the Roth testimony involving
4 the Cooneys moving to Arizona, and I think that that
5 is the part that Mr. Lebetkin, you have questioned me
6 about?

7 MR. LEBETKIN: Well, my inquiry, Judge,
8 was whether or not other members of the jury were —

9 THE COURT: No, that was the subject,
10 was it?

11 MR. LEBETKIN: That was the subject,
12 yes.

13 THE COURT: I will ask it. When we
14 finished with that, and reading that part, and first
15 Mr. Chow called it cross examination or redirect,
16 but that was, as you finally quickly said, you meant
17 cross examination by Mr. Lombardino, and then it was
18 read, and then, as far as I understood you, just from
19 observing, you seemed to be all satisfied.

20 Juror Number Ten and Eleven, and maybe
21 it might have been Ten and Eleven, at least the lawyers
22 thought that you were expressing in some way that you
23 may not have been satisfied, as Mr. Chow was telling
24 me. Were you satisfied?

25 JUROR NO. 10 (EARL): Yes.

1 THE COURT: How about Juror Number
2 Eleven?

3 JUROR NO. 11 (GREEN): Yes.

4 THE COURT: Now, on your other note
5 nere: 'May we please hear Mr. Ryan's cross examination
6 of Cammusa, about Bruce Kay' and Mr. Chow, this comes
7 from your group, and it is directed at that particular
8 cross examination by Mr. Ryan of Mr. Cammusa, concerning
9 Bruce Kay?

10 FOREMAN CHOW: Yes, sir.

11 THE COURT: And they think they have
12 pinpointed it, the lawyers, and the Court Reporter,
13 and it is going to take some reading, and it will be
14 a half an hour or so , and we will start with it.

15 (Whereupon, the cross examination by
16 Mr. Ryan of Mr. Cammusa was read by the Court Reporter)

17 THE COURT: Now, Mr. Chow, is that
18 what the jury wanted?

19 FOREMAN CHOW: Yes, sir.

20 THE COURT: And are you satisfied now
21 that we have read all that you wanted at this time?

22 FOREMAN CHOW: Yes.

23 THE COURT: Now, I am going to ask you
24 to be careful how you answer me. Do you want to
25 continue your deliberations, or do you want to start

1 again in the morning?

2 It is getting late, and it is quarter
3 after eleven.

4 I know some of you come from as far
5 as Lake George and Glens Falls, and these are quite
6 some distances from here.

7 Have you made any canvass about what
8 the Jurors want to do in that respect? I don't want
9 to find out whether you have progressed in your
10 deliberations either way, or what has happened.

11 FOREMAN CHOW: If we could, I think that
12 we would like a little time for deliberations, and
13 consume a little more deliberations, if we could.

14 THE COURT: I didn't understand you.

15 FOREMAN CHOW: If we can, we would like
16 to resume our deliberations.

17 THE COURT: Thank you.

18 It is now 11:15, and the jury will retire.
19 (Whereupon, the jury retired to the
20 Juryroom.)

21
22 (Whereupon, at 11:35 p.m., the jury
23 was returned to the Court room and the following
24 proceedings took place.)

25 THE COURT: Mr. Clerk, take the verdict

1 from the jury.

2 THE CLERK: Ladies and Gentlemen of
3 the Jury, have you agreed upon a verdict, and if so,
4 now do you find, and who shall say for you?

5 FOREMAN CHOW: Yes, sir.

6 Yes, Your Honor, sir: all of us here,
7 we all find the Defendants Mr. Cooney, guilty; Mr.
8 Lefebvre, guilty; Mr. Levy, guilty; Mr. Kay, guilty.

9 THE CLERK: Harken to your verdict,
10 Ladies and Gentlemen, as the Court has recorded it.
11 You say that you find each Defendant guilty, and so
12 say you all?

13 THE COURT: I will ask you, do you have
14 anything to say?

15 FOREMAN CHOW: No, sir.

16 THE COURT: I want to ask Counsel now?

17 MR. LOMBARDINO: Your Honor, I would
18 like to have the jury polled.

19 THE COURT: Each one of them?

20 MR. LEBETKIN: I join in that.

21 MR. LEONE: Yes, I do.

22 MR. RYAN: Mr. Bruce Kay joins in that.

23 THE COURT: We will poll them on each
24 of the four Defendants. Take them in that order.

25 Cooney, Levy, Lefebvre, and Kay.

1

THE CLERK: As your name is called,

2

please indicate your verdict.

3

Juror Number 1, Charles Chow?

4

JUROR NO. 1 (CHOW): Guilty.

5

THE CLERK: Juror Number 2, Stephen

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Cadalso.

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JUROR NO. 2 (CALDALSO): Guilty.

8

THE CLERK: Juror Number 3, Marguerite

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Haines.

10

JUROR NO. 3 (HAINES): Guilty.

11

THE CLERK: Juror Number 4, Ronald

12

Dessormeau.

13

JUROR NO. 4 (DESSORMEAU): Guilty.

14

THE CLERK: Juror Number 5, Eileen

15

Slawsby.

16

JUROR NO. 5 (SLAWSBY): Guilty.

17

THE CLERK: Juror Number 6, Theresa

18

Meyers.

19

JUROR NO. 6 (MEYERS): Guilty.

20

THE CLERK: Juror Number 7, Arnold

21

Glover.

22

JUROR NO. 7 (GLOVER): Guilty.

23

THE CLERK: Juror Number 8, Lawrence

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Mudrey.

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JUROR NO. 8 (MUDREY): Guilty.

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Jankovic.

THE CLERK: Juror Number 9, Joseph

JUROR NO. 9 (JANKOVIC): Guilty.

Earl.

THE CLERK: Juror Number 10, Judith

JUROR NO. 10 (EARL): Guilty.

Green.

THE CLERK: Juror Number 11, Michael

JUROR NO. 11 (GREEN): Guilty.

Catalano.

THE CLERK: Juror Number 12, Elizabeth

JUROR NO. 12 (CATALANO): Guilty.

Defendant Harold Levy, Jr. Juror Number 1, Charles
Chow.

THE CLERK: Now, as regards the

JUROR NO. 1 (CHOW): Guilty.

Cadalso.

THE CLERK: Juror Number 2, Stephen

JUROR NO. 2 (CADALSO): Guilty.

Haines.

THE CLERK: Juror Number 3, Marguerite

JUROR NO. 3 (HAINES): Guilty.

Dessormeau.

THE CLERK: Juror Number 4, Ronald

JUROR NO. 4 (DESSORMEAU): Guilty.

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THE CLERK: Juror Number 5, Eileen

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Slawsby.

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JUROR NO. 5 (SLAWSBY): Guilty.

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THE CLERK: Juror Number 6, Theresa

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Meyers.

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JUROR NO. 6 (MEYERS): Guilty.

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THE CLERK: Juror Number 7, Arnold

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Glover.

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JUROR NO. 7 (GLOVER): Guilty.

10

THE CLERK: Juror Number 8, Lawrence

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Mudrey.

12

JUROR NO. 8 (MUDREY): Guilty.

13

THE CLERK: Juror Number 9, Joseph

14

Jankovic.

15

JUROR NO. 9 (JANKOVIC): Guilty.

16

THE CLERK: Juror Number 10, Judith Earl.

17

JUROR NO. 10 (EARL): Guilty.

18

THE CLERK: Juror Number 11, Michael

19

Green.

20

JUROR NO. 11 (GREEN): Guilty.

21

THE CLERK: Juror Number 12, Elizabeth

22

Catalano.

23

JUROR NO. 12 (CATALANO): Guilty.

24

THE CLERK: In regard to Defendant John

25

Lefebvre, Juror Number 1, Charles Chow.

1

JUROR NO. 1 (CHOW): Guilty.

2

THE CLERK: Juror Number 2, Stephen

3

Cadalso.

4

JUROR NO. 2 (CADALSO): Guilty.

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THE CLERK: Juror Number 3, Marguerite

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Haines.

7

JUROR NO. 3 (HAINES): Guilty.

8

THE CLERK: Juror Number 4, Ronald

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Dessormeau.

10

JUROR NO. 4 (DESSORMEAU): Guilty.

11

THE CLERK: Juror Number 5, Eileen

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Slawby. /

13

JUROR NO. 5 (SLAWSBY): Guilty.

14

THE CLERK: Juror Number 6, Theresa

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Meyers.

16

JUROR NO. 6 (MEYERS): Guilty.

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THE CLERK: Juror Number 7, Arnold

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Glover.

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JUROR NO. 7 (GLOVER): Guilty.

20

THE CLERK: Juror Number 8, Lawrence

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Mudrey.

22

JUROR NO. 8 (MUDREY): Guilty.

23

THE CLERK: Juror Number 9, Joseph

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Jankovic.

25

JUROR NO. 9 (JANKOVIC): Guilty.

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THE CLERK: Juror Number 10, Judith

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Earl.

3

JUROR NO. 10 (EARL): Guilty.

4

THE CLERK: Juror Number 11, Michael

5

Green.

6

JUROR NO. 11 (GREEN): Guilty.

7

THE CLERK: Juror Number 12, Elizabeth

8

Catalano.

9

JUROR NO. 12 (CATALANO): Guilty.

10

THE CLERK: Now, as regards to Defendant

11

Bruce Kay. Juror Number 1, Charles Chow.

12

JUROR NO. 1 (CHOW): Guilty.

13

THE CLERK: Juror Number 2, Stephen

14

Cadalso.

15

JUROR NO. 2 (CADALSO): Guilty.

16

THE CLERK: Juror Number 3, Marguerite

17

Haines.

18

JUROR NO. 3 (HAINES): Guilty.

19

THE CLERK: Juror Number 4, Ronald

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Dessormeau.

21

JUROR NO. 4 (DESSORMEAU): Guilty.

22

THE CLERK: Juror Number 5, Eileen

23

Slawsby.

24

JUROR NO. 5 (SLAWSBY): Guilty.

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THE CLERK: Juror Number 6, Theresa

1 Meyers.

2 JUROR NO. 6 (MEYERS): Guilty.

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4 Glover.

5 THE CLERK: Juror Number 7, Arnold

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7 Mudrey.

8 JUROR NO. 7 (GLOVER): Guilty.

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10 Jankovic.

11 THE CLERK: Juror Number 8, Lawrence

12
13 Earl.

14 JUROR NO. 8 (MUDREY): Guilty.

15
16 realizing that all --

17
18 out.

19 JUROR NO. 10 (EARL): I would like to

20 say, not sure, but I say guilty because of the other --

21 persuade eleven jurors to change their vote.

22 THE COURT: What is your verdict, your

23 judgement?

24 JUROR NO. 10 (EARL): Guilty.

25 THE COURT: All right.

1

THE CLERK: Number 11, Michael Green.

2

JUROR NO. 11 (GREEN): Guilty.

3

THE CLERK: Juror Number 12, Elizabeth

4

Catalano.

5

JUROR NO. 12 (CATALANO): Guilty.

6

THE COURT: Miss Earl, I am going to

7

ask you, particularly on this last call that we had:

8

did you surrender any convictions because of any

9

pressures on you, or is that your judgement that you

10

find that this Defendant Kay is guilty? You have to

11

use your own judgement.

12

JUROR NO. 10 (EARL): I definitely feel

13

pressures.

14

THE COURT: What did you say?

15

JUROR NO. 10 (EARL): I definitely

16

feel pressures.

17

THE COURT: I can't hear you.

18

JUROR NO. 10 (EARL): I definitely feel

19

pressure on this decision.

20

THE COURT: What kind of pressure?

21

Did you listen to the opinions of the other jurors?

22

JUROR NO. 10 (EARL): Yes. I have

23

requested that we ask Your Honor to review the legal

24

advice, or the legal charge that you gave us about the

25

conspiracy, relating to the part where they said that

1 they would have to be involved in only a small portion
2 of the conspiracy, or not to be convicted --

3 THE COURT: Well, isn't that --

4 JUROR NO. 10 (EARL): I don't know.

5 THE COURT: Wasn't that made clear to
6 you?

7 JUROR NO. 10 (EARL): The other point
8 that I had some doubt on, and I am only saying this
9 because of my reasonable doubt, and I feel that it is
10 reasonable, was the points that were made about Bruce
11 Kay taking over the conspiracy, and I felt that I have
12 reasonable doubt about that.

13 THE COURT: Well, I have to inquire,
14 because we are in an awkward position: you were polled
15 here and the question is, do you find Kay guilty under
16 the law as I charged you, and on the testimony given
17 in this case.

18 How old are you?

19 JUROR NO. 10 (EARL): Twenty-five.

20 THE COURT: And was any coercion placed
21 upon you to return a verdict here?

22 JUROR NO. 10 (EARL): No. I don't --
23 I mean the only one I felt unsure of, having any doubt
24 on, was that last Defendant, was Bruce Kay, and I have --

25 THE COURT: You may have felt, but did

1 you finally reach a conclusion that you want reported
2 and made part of the verdict in this case?

3 JUROR NO. 10 (EARL): Yes, I said that
4 I do.

5 THE COURT: And you do that freely,
6 and that is the point that we are trying to find out.
7 Are you under any pressure? It is your judgement, your
8 own mind has to make the decision.

9 JUROR NO. 10 (EARL): I concede that
10 Bruce Kay is guilty.

11 THE COURT: Do you say he is guilty?

12 JUROR NO. 10 (EARL): Yes.

13 THE COURT: Now, I am going to take
14 her verdict and her judgement.

15 That happens in many instances when
16 reasonable doubt arises in the minds of the jurors,
17 that your judgement has to be made.

18 MR. RYAN: Your Honor, under the
19 circumstances, that she has explained --

20 THE COURT: Do you find he is guilty?
21 I am going to ask you directly.

22 JUROR NO. 10 (EARL): Yes, I find that
23 he is guilty.

24 THE COURT: That is your finding as a
25 juror, to apply the law and listen to the facts and

1 the testimony and reach a judgement, and is that your
2 judgement?

3 JUROR NO. 10 (EARL): Yes, sir.

4 THE COURT: Is it?

5 JUROR NO. 10 (EARL): Yes, sir.

6 THE COURT: Now is the time to express
7 it. You have two things, guilty or not guilty.

8 JUROR NO. 10 (EARL): Guilty.

9 THE COURT: All right.

10 MR. RYAN: May I inquire?

11 THE COURT: No, I am going to accept
12 the verdict.

13 MR. LOMBARDINO: I have an application.

14 THE COURT: What is your application?

15 MR. LOMBARDINO: In the early part of
16 this trial, it was quite obvious that the Foreman,
17 Mr. Chow, was taking notes. As a matter of fact,
18 Your Honor inquired. I recall before where Mr. Chow
19 stood up concerning some of the examination; he was very
20 specific about Roth's testimony concerning, it is a
21 meeting that was quite well fixed in Mr. Chow's mind.

22 I respectfully request the Court, at
23 this time, to have Mr. Chow's notes produced and marked
24 either as a Court Exhibit or marked as a Defendants'
25 Exhibit.

1 THE COURT: Well, I will ask Mr. Chow:
2 do you have those notes, sir?

3 JUROR NO. 1 (CHOW): That was the one
4 time that I tried to, Your Honor, give it back to the
5 Marshal, and that was during your observation, Your
6 Honor, sir. I had those notes, and that was written
7 on some of a napkin.

8 THE COURT: Had you shown those notes
9 or discussed them with any other jurors?

10 JUROR NO. 1 (CHOW): I did jot down my
11 memory from time to time.

12 THE COURT: You mean, during the trial,
13 or what?

14 JUROR NO. 1 (CHOW): I was sitting in
15 the juryroom, I did that, and tried to have my own
16 memory refreshed.

17 THE COURT: No, I deny the application.

18 MR. LOMBARDINO: Can't we have them
19 marked. I just wantto have the notes marked.

20 THE COURT: I don't think that we need
21 it. I don't think that there is any prejudice or harm,
22 or no discussion at the time it was developed. It was
23 brought out in open court, and I told him that he had
24 the right to continue making them if he wanted to, and
25 nobody said a word about it.

1 MR. LOMBARDINO: I was not in the
2 juryroom, and I respectfully submit, Your Honor, was
3 not either. That may have been a contributing part,
4 if Mr. Chow referred to his notes, and then spoke.

5 THE COURT: No, I have no doubt about
6 it. Where are the notes, and do you have them,
7 Mr. Marshal?

8 MARSHAL BRINKMAN: No, I never touched
9 them. You said that they were all right for him
10 to keep and he offered them to me, and I said that they
11 are yours, and what do you want with them.

12 THE COURT: Do you have them in your
13 possession now?

14 JUROR NO. 1 (CHOW): Not those notes, sir.

15 THE COURT: What did you do with those
16 notes?

17 JUROR NO. 1 (CHOW): I probably throwed
18 them away.

19 THE COURT: The ones that you were taking
20 in the jurybox?

21 JUROR NO. 1 (CHOW): Some of them I had
22 with me here.

23 THE COURT: Do you have those notes?

24 JUROR NO. 1 (CHOW): Yes, I have
25 those notes. No, I didn't take them from here.

1 THE COURT: The ones in the jurybox that
2 you were taking?

3 JUROR NO. 1 (CHOW): No, those, that was
4 from, no, I probably destroyed them.

5 THE COURT: You destroyed them?

6 JUROR NO. 1 (CHOW): Right.

7 JUROR NO. 10 (EARL): I have no objections
8 to it, but there are notes in there, written by him, and
9 I have no objection to it.

10 THE COURT: We have a policy. This is
11 not very unusual, and I am not upset about it at all
12 because this is our jury function, and I am satisfied
13 that you gave the case conscientious deliberation, and
14 you were extremely perceptive in the questions that you
15 posed in your written notes, and your attention was
16 shown by the perception that you had about different
17 parts of the testimony.

18 I am satisfied that you followed the
19 testimony and applied the law, and you gave the case
20 careful and lengthy consideration. I think we still have
21 to poll Number 11 and 12 on the last one, Kay. We are
22 polling the verdict that was first returned by Mr.
23 Chow for the entire group. We will take 11 and 12.

24 THE CLERK: Juror Number 11, Michael
25 Green.

1 we have a central office on Grooms Road in Clifton
2 Park, and that is the only place that I went to.

3 I am a switchman for the New York
4 Telephone Company.

5 THE COURT: I am satisfied with your
6 verdict; highly satisfied, and so I thank you very
7 much, and ask you to return on January 4th, and I wish
8 you all a happy holiday.

9 JUROR NO. 1 (CHOW): Happy holiday
10 to you, sir.

11 (Whereupon, the jury was excused.)

12 THE COURT: Now, what I do, I assume
13 Mr. Dreyer may move to sentence tonight?

14 MR. DREYER: I move or request that it
15 be deferred, and it is the practice of this Court to
16 move for sentencing, but it is a practice of the Court
17 also to move for sentencing after the pre-sentence
18 report.

19 THE COURT: Well, I have to take the
20 Motions with regard to the jury verdict.

21 MR. DREYER: Yes, sir.

22 THE COURT: I will take those at this
23 time.

24 MR. RYAN: Of course, on behalf of
25 the Defendant Bruce Kay, I move to set aside the verdict

1 as contrary to the credible evidence in the case,
2 and the second ground for my Motion is that Bruce Kay
3 did not receive a verdict based on twelve independent
4 votes, by people who were convinced of the evidence
5 beyond a reasonable doubt.

6 The colloquy and the statement made
7 here by Juror Number 10, unequivocally shows in my
8 judgement, that this 25-year-old woman had a reasonable
9 doubt as to Bruce Kay's guilt.

10 I know, Judge, that in your leading and
11 your examining of this jury, she felt that she did,
12 in the juryroom, she had to concede that her vote should
13 be guilty. She definitely stated, and we all heard it,
14 that she only bowed because she felt she couldn't per-
15 suade the others, and she stated, and I think that the
16 Court Reporter picked it up, that she was pressured into
17 a vote.

18 I will do some research on that matter,
19 and make an appropriate Motion, based on this juror's
20 examination.

21 In addition, Judge, I am going to make
22 an effort to interview the juror, and I want to put
23 that on the record, too, in support of my Motion.

24 So based on those matters, I wish to
25 move to set aside the verdict against Mr. Kay.

1 THE COURT: Mr. Dreyer, do you want to
2 reply to that, for the record?

3 MR. BREYER: No, I think that the
4 question about the juror was handled by the Court without
5 intervention by the Government.

6 THE COURT: I will deny the Motion. I
7 am well satisfied with the decision that she made, and,
8 of course, that is part of the jury process at this time.
9 People change, and judgements are changed by opinions,
10 and change, and one from the other, and so forth. That
11 is part of our system.

12 MR. RYAN: But when she set in this chair,
13 and she was polled and asked whether or not -- what her
14 vote was, she could not answer guilty when she was asked
15 that question, and she gave an explanation.

16 THE COURT: I am content to stay on her
17 verdict as she expressed it finally and flatly that she
18 found the Defendant guilty.

19 MR. RYAN: I think that, Judge, I should
20 have been afforded an opportunity to have made an
21 inquiry of the juror before Your Honor accepted her
22 verdict.

23 THE COURT: Well, you stated that for
24 the record. I don't think that you are so entitled.

25 Mr. Lombardino?

1
2 MT. LOWARDINO: On behalf of Defendant
3 Cooney, I respectfully, at this time, move to set aside
4 the verdict on the ground that it is contrary to the
5 credible evidence, and the Government has failed to
6 prove guilt beyond a reasonable doubt.

7 In addition, thereto, Your Honor, I
8 respectfully move to set aside the verdict on the
9 grounds that the guilty verdict, apparently, now,
10 especially in light of the fact that Your Honor has
11 received four pages of notes from the Foreman, which
12 are not only notes that he has taken today, but apparently
13 this has been a running account of notes that he has
14 compiled on a day-to-day basis, whereby he has stated
15 to the Court that he wrote notes on napkins or tissues,
16 and he would throw them away, and transfer the notes
17 on these papers.

18 In addition thereto, it is quite clear
19 that Mr. Chow had these notes in the juryroom during the
20 course of the deliberations. As a matter of fact, Your
21 Honor, in asking, and in all fairness we did ask Mr.
22 Chow to produce those notes, and he had to leave the
23 Courtroom and go inside the juryroom and leave the
24 eleven sitting here, and he came back with four pages
25 of notes.

I submit to you, Your Honor, that this

1 is probably, and has far-reaching influence by Mr.
2 Chow, the Foreman of the jury, and on the other eleven
3 members, at any rate, and we will never know, because
4 we did not inquire as to what effect or what use those
5 notes were ultimately put to during the course of the
6 deliberations.

7 As a matter of fact, Number 10, the same
8 young lady who appeared so very upset when she returned
9 her verdict, as she said, she was not sure, indicated
10 that Mr. Chow had these notes, and was looking at them,
11 and speaking in relation to the notes during the course
12 of the deliberations, and therefore, I respectfully
13 submit that the verdict be set aside.

14 THE COURT: Motion denied.

15 MR. RYAN: May I be excused for a minute,
16 Judge, one minute?

17 THE COURT: I think that you should wait
18 until the other lawyers finish their Motions.

19 You want to go and see Miss Earl, don't
20 you?

21 MR. RYAN: I just want to -- I do.

22 THE COURT: You can go and see her.
23 She will be around.

24 MR. RYAN: She will be out of the
25 Courthouse.

1 THE COURT: She lives in Lake George,
2 and you can find her.

3 MR. LEBETKIN: Your Honor, I respectfully
4 move to set aside the verdict as being contrary to the
5 weight of the evidence, the credible evidence, and I
6 also would like to point out that Number 10, something
7 prompted Number 10 to indicate to Your Honor that perhaps
8 Mr. Chow was being less than candid with the Court with
9 respect to those papers, and the impression that I got
10 from Mr. Chow, when he was engaged in that colloquy with
11 Your Honor, was that he may have had a scratch paper
12 there, or a napkin in the juryroom, and something
13 insignificant.

14 That turns out to be four pages, and it
15 may very well be, Judge, that this woman was upset by
16 actions in the juryroom, including -- including what
17 Mr. Chow was doing.

18 Now, I am not really satisfied that there
19 was no undue influence on this woman. Not only with
20 respect to Bruce Kay, but as to the other Defendants in
21 this case, and particularly my client.

22 THE COURT: She didn't say she had any
23 trouble about that.

24 MR. LEBETKIN: She didn't say it speci-
25 fically, but the longer she talked, the more free she

1 got in what she said. She was apparently embarrassed to
2 say anything, to begin with.

3 I believe, Judge, that if that woman were
4 questioned, and of course, I am going to attempt to
5 question her also, and I would like to be clear on
6 the record, that a lot more may come out from that
7 woman than we heard on this record tonight, and it may
8 be that the entire verdict was taken, that woman was
9 the one that who, I indicated to Your Honor, leaned
10 over to Mr. Chow, earlier in the evening and wanted the
11 cross examination of Mr. Lombardino read. Now, the
12 cross examination on Rotn may ver well have affected
13 Mr. Levy, because Mr. Levy was included in that conver-
14 sation.

15 I believe that some highly unusual
16 things happened here tonight, and probably some of
17 them are not known to us, and may never be known, but
18 I have an obligation to try and find out.

19 THE COURT: You may say that, but I don't
20 think that anything unusual happened. In fact, I think
21 that you had a very conscientious twelve people pass
22 upon the guilt or innocence. They demonstrated it
23 by the notes that they brought in, and by the time that
24 they spent in their deliberations.

25 As far as Mr. Chow is concerned, I would

Appellant's Formal Motion for a New Trial
Pursuant to Rule 33 of the Federal Rules
of Criminal Procedure.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA :

- against - :

Cr. No. 76-CR-12

BRUCE KAY, :

NOTICE OF MOTION

Defendant. :

- - - - -X

PLEASE TAKE NOTICE that, upon the annexed affidavit of JOSEPH W. RYAN, JR., sworn to January 4, 1976 and Memorandum of Law, and upon all the proceedings had herein, the undersigned will move this Court before the Honorable James T. Foley, Chief Judge for the United States District Court for the Northern District of New York at the United States Courthouse, 445 Broadway, Albany, New York on January 17, 1977 at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order granting a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Dated: Mineola, New York
January 4, 1977

JOSEPH W. RYAN, JR.

Joseph W. Ryan, Jr.
Attorney for Bruce Kay
114 Old Country Road
Mineola, New York 11501

TO:

HON. PAUL V. FRENCH
United States Attorney for the
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GABRIEL B. LEONE, ESQ.
Nicolosi, Filardi, Robinson & Leone
Attorneys for John LeFebvre
39-07 Bell Boulevard
Bayside, New York 11361

Affidavit of Joseph W. Ryan, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

- against - :

AFFIDAVIT

BRUCE KAY, :

Defendant.

Cr. No. 76-CR-12

-----X

JOSEPH W. RYAN, JR., being duly sworn, deposes and
says:

1. This Affidavit is submitted on behalf of the
defendant, BRUCE KAY, in support of a Motion pursuant to Rule 33
of the Federal Rules of Criminal Procedure for a new trial in
the "interest of justice."

2. The basis for this Motion is the defendant's
contention that the verdict returned against him did not consti-
tute a unanimous verdict by twelve jurors who were convinced of
the defendant's guilt beyond a reasonable doubt. We respectfully
submit that the record demonstrates that Juror No. 10, Mrs.
Judith Earl, returned a verdict of guilty only because of coer-
cive influences brought upon her both in the Jury Room and in
the Courtroom at the time of polling. Despite her acquiescence
with the majority, the record reveals that this juror never was
convinced of the defendant's guilt beyond a reasonable doubt.
To the contrary, the record shows unequivocally that Mrs. Earl
honestly had a reasonable doubt as to the defendant's guilt
during the polling process, and that she had attempted to
explain to the Court's satisfaction that the only reason she had

voted guilty was because of the pressures brought upon her by the other eleven jurors, and her exasperation in unsuccessfully seeking to persuade the other eleven jurors of the correctness of her honest conviction.

3. To understand the basis for the foregoing contention, it is necessary to briefly recall the circumstances under which these revelations were made by the juror, Judith Earl. Following a lengthy four week trial, the jury began its deliberations at approximately 12:10 p.m. on Wednesday, December 22, 1976. The record of the deliberation shows that there was a substantial question amongst the jurors concerning the evidence of defendant, BRUCE KAY'S alleged involvement in the conspiracy. Pursuant to its request, the jury heard a reading of William Katz' testimony at approximately 4:30 p.m. concerning the alleged delivery of marijuana by defendant, BRUCE KAY, to Katz' home in Albany, New York. It will be remembered that, after the first reading of this testimony, Mrs. Earl stated through the foreman that she wanted read that portion of Katz' testimony where the defendant, Harold Levy, was alleged to have given a reason for the delivery to have taken place at Katz' home, namely, because repair work was being done at Levy's house. We point this out to show the Court that Mrs. Earl was taking an active participation with the other jurors in evaluating the evidence as to defendant, BRUCE KAY.

4. The jury took its only break in the deliberations between 6:00 p.m. and 7:15 p.m. to leave the Courthouse for dinner. Before leaving for dinner, however, a jury note requested further reading of testimony concerning defendant,

BRUCE KAY. One note requested a reading of the testimony of Paul Moskowitz concerning the alleged unloading of marijuana from a camper by defendant, BRUCE KAY, at Harold Levy's home. After returning from dinner, the jury heard the requested testimony read to them at approximately 9:00 p.m. After further deliberations, another note was received from the jury concerning the defendant, BRUCE KAY. This note requested the reading of the cross-examination of Paul Cammuso concerning defendant, BRUCE KAY. When the jury entered the jury box to hear the reading of this testimony, the Court Reporter informed the jury that it would take approximately a half hour to read such testimony. I recall that most of the jurors winced when they heard that it would take such time to read this testimony. We point this out to show the Court that these deliberations were at a point when the jury was weary, tired and pressing to reach a definitive verdict as to all defendants, particularly BRUCE KAY. After the reading of the testimony, the Court inquired of the foreman, Mr. Chow, whether the jury would prefer retiring for the evening and resuming deliberations the following morning. Mr. Chow stated that the jury wished to continue further deliberations. Within a half hour later, the jury sent its note that it had reached a verdict.

5. At approximately 11:35 p.m., the foreman, Mr. Chow, read the verdict from a piece of paper. After reading each defendant's name, the foreman announced the verdict "Guilty." Each defense counsel then requested that the jury be polled as to their respective clients. This portion of the trial has been transcribed, and the transcript has been filed with the Court.

There are, however, several errors in the transcript which we will point out to the Court as we proceed in setting forth the circumstances under which the polling was conducted.

6. The jury was first polled as to the defendant, Kevin Cooney, and continued with each defendant in the order of the Indictment. On the first poll, Mrs. Earl answered that her verdict as to defendant, Kevin Cooney, was guilty, but her voice was so inaudible that it was necessary for the Clerk to request her verdict a second time, to which she answered guilty. I recall observing this juror. She appeared to be a woman who was exhausted and exasperated over what was an apparent intense struggle to obtain her vote. But, as to defendant, Kevin Cooney, she reaffirmed her guilty vote without any explanation, and the polling continued. On the second and third polls as to defendants, Harold J. Levy, Jr. and John Lefebvre, Mrs. Earl announced, without any explanation, that her verdict was "Guilty."

7. On the last poll as to the defendant, BRUCE KAY, Mrs. Earl was asked for her verdict. Before giving her verdict, she gave an explanation (Tr., pp. 10-11):

JUROR NO. 10, JUDITH EARL: I would like to say not sure, but I say guilty because of the others -- realizing that all --

THE COURT: (Interrupting)
Speak right out.

JUROR NO. 10, JUDITH EARL: I would like to say, not sure, but realizing that I am not going to persuade eleven jurors to change their vote.

THE COURT: What is your verdict, your judgment?

JUROR NO. 10, JUDITH EARL: Guilty.

I recall the manner in which Mrs. Earl gave this explanation by shaking her head negatively. Her facial expressions and tone of voice indicated that this woman was in anguish over the fact that she felt she had no alternative but to vote guilty despite her honest conviction that there was a reasonable doubt as to the defendant, BRUCE KAY'S guilt.

8. This observation is substantiated by the subsequent events revealed by the transcript. The polling continued of Juror Nos. 11 and 12 as to their verdict, and each answered "Guilty." At this point I stood up prepared to object to the verdict. Then the Court returned to make further inquiry of Mrs. Earl concerning her verdict. The initial inquiry itself demonstrates that Mrs. Earl was voting guilty solely because of the coercive pressures of being the sole dissenting juror. The transcript shows the following (Tr., pp. 11-12):

THE COURT: Miss Earl, I am going to ask you, particularly on this last call that we had: Did you surrender any convictions because of any pressures on you, or is that your judgment that you find that this defendant Kay is guilty? You have to use your own judgment.

JUROR NO. 10, JUDITH EARL: I definitely feel pressures.

THE COURT: What did you say?

JUROR NO. 10, JUDITH EARL: I definitely feel pressures.

THE COURT: I can't hear you.

JUROR NO. 10, JUDITH EARL: I definitely feel pressure on this decision.

9. Having admitted three times that she had tendered her vote under "pressure," the Court sought to ascertain the

nature of the pressures. Mrs. Earl attempted to explain that she had asked the other jurors to request a rereading of the Court's charge concerning the requirements to find an individual defendant guilty of becoming a member of a conspiracy. The other jurors had rejected her request. The transcript does not reveal that Mrs. Earl further told the Court that the other jurors explained to her what the law required in that regard, and that the Court responded that it was not unusual for jurors to consult each other on the law, and further asked Mrs. Earl whether she understood the Court's charge. As the transcript shows, Mrs. Earl responded: "I don't know." The Court asked, "Wasn't that made clear to you?"

10. At this point, Mrs. Earl began to explain other phases of the case against defendant, BRUCE KAY, upon which she had a reasonable doubt. (Tr., pp. 12-13)

JUROR NO. 10, JUDITH EARL: The other point that I had some doubt on, and I am only saying this because of my reasonable doubt, and I feel that it is reasonable, was the points that were made about Bruce Kay taking over the conspiracy, and I felt that I have reasonable doubt about that. (Emphasis added)

Here again, the transcript does not accurately reflect everything Mrs. Earl said. I recall that Mrs. Earl specifically mentioned that she could not accept the testimony concerning the Friar Tuck Restaurant meeting between Kay, Levy and Paul Cammuso, where Levy was alleged to have said that Kay was taking over the operation.

11. Having been informed by Mrs. Earl that she had a reasonable doubt, and that her vote was tendered under pressure, the Court did not declare a mistrial or direct the jury to

continue further deliberations either that same night or the next morning. Instead, the Court further questioned Mrs. Earl in the presence of the eleven other jurors, the defendants and counsel. At this point, there can be no question that Mrs. Earl was being singled out for her dissenting view as revealed by her attempted explanations and frank expressions of doubt. It is true that the Court felt an obligation to obtain clarification of her vote before accepting the verdict. This was undoubtedly because the Court recognized that it could not accept the verdict in view of Mrs. Earl's clear expressions of doubt as to defendant, BRUCE KAY'S guilt, and her admission that she felt no alternative but to acquiesce in the votes of the eleven other jurors. This was a frightened, scared woman who gave honest feelings and thoughts to the Court. But the Court's continuing and persistent questioning could only have impressed upon this juror that she would invite some adverse consequences, either to the trial or to herself if she insisted upon expressing her innermost thoughts concerning defendant, BRUCE KAY'S guilt. Mrs. Earl undoubtedly concluded in the face of the continued questioning that the easier course to avoid the apparent displeasure created by her disclosure would be to vote "Guilty." We respectfully submit that this view of the proceedings is borne out by the following interrogation. (Tr., pp. 13-14):

THE COURT: Well, I have to inquire, because we are in an awkward position: You were polled here and the question is, do you find Kay guilty under the law as I charged you, and on the testimony given in this case.

How old are you?

JUROR NO. 10, JUDITH EARL: 25

THE COURT: And was any coercion placed upon you to return a verdict here?

JUROR NO. 10, JUDITH EARL: No. I don't -- I mean the only one I felt unsure of, having any doubt on, was that last defendant, was Bruce Kay, and I have --

THE COURT: You may have felt, but did you finally reach a conclusion that you want reported and made part of the verdict in this case?

JUROR NO. 10, JUDITH EARL: Yes, I said that I do.

THE COURT: And you do that freely, and that is the point that we are trying to find out. Are you under any pressure? It is your judgment, your own mind has to make the decision.

There was a lengthy pause before the next answer.

JUROR NO. 10, JUDITH EARL: I can see (concede) that Bruce Kay is guilty.

12. The transcript erroneously quotes Mrs. Earl as stating that she "can see" that Bruce Kay is guilty. The Court will recall, and the Court Reporter will undoubtedly confirm, the fact that Mrs. Earl "conceded" that Bruce Kay was guilty. Before the jury was discharged, the Court Reporter sought clarification from Mrs. Earl on this Point. Mrs. Earl spelled the word concede for the reporter so that there would be no doubt as to her concession. This language used by Mrs. Earl best illustrates the fact that she was, indeed, acquiescing in the vote of the majority, despite her honest conviction that she had a reasonable doubt as to defendant, BRUCE KAY'S guilt.

13. Once Mrs. Earl conceded defendant, BRUCE KAY'S guilt, the Court asked, "Do you say he is guilty?" Mrs. Earl answered, "Yes." The Court announced: "Now, I am going to take her verdict and her judgment. That happens in many

instances when reasonable doubt arises in the minds of the jurors, that your judgment has to be made." Because the Court's acceptance of the verdict was not satisfactory to the defendant, BRUCE KAY, I attempted to interpose my objection. But, it was interrupted by the Court propounding another series of questions to Mrs. Earl (Tr., pp. 14-15):

THE COURT: Do you find he is guilty?
I am going to ask you directly.

JUROR NO. 10, JUDITH EARL: Yes, I find that he is guilty.

THE COURT: That is your finding as a juror, to apply the law and listen to the facts and the testimony and reach a judgment, and is that your judgment?

JUROR NO. 10, JUDITH EARL: Yes, sir.

THE COURT: Is it?

JUROR NO. 10, JUDITH EARL: Yes, sir.

THE COURT: Now, is the time to express it. You have two things, guilty or not guilty.

JUROR NO. 10, JUDITH EARL: Guilty.

THE COURT: All right.

MR. RYAN: May I inquire?

THE COURT: No, I am going to accept the verdict.

14. We view the foregoing exchange as a demonstration that Mrs. Earl simply capitulated her position in the face of the Court's questioning. For the Court to say: "Now is the time to express it. You have two things, guilty or not guilty" was simply presenting an ultimatum to this juror. By this time, after twelve hours of deliberation and in the middle of the night, it is understandable that this woman sought to avoid the continued questioning before the jury, defendants and counsel

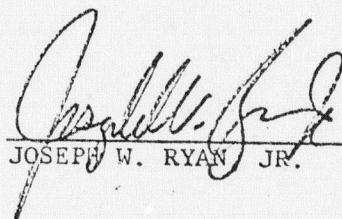
which singled her out as the only one who could prevent this case from being terminated, and the jury sent home for the Christmas holiday.

15. No one can ignore what was on everybody's mind in the Courtroom. The deliberations were encroaching upon the Christmas holiday. It would be unrealistic for anyone to say under the circumstances that this jury was not intent on reaching a conclusion to this case before the deliberations infringed on their ability to free themselves for the holiday.

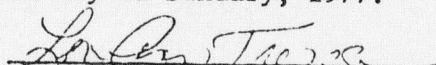
16. Based upon all of the foregoing circumstances and the principles of law set forth in the annexed Memorandum of Law, we respectfully submit that the verdict must be set aside and a new trial ordered because the defendant, BRUCE KAY, did not receive a unanimous verdict of twelve jurors who were convinced of his guilt beyond a reasonable doubt.

WHEREFORE, your deponent respectfully requests that the Motion be granted.

Dated: January 4, 1977
Mineola, New York


JOSEPH W. RYAN JR.

Sworn to before me this
4th day of January, 1977.


Notary Public

LOU ANN TREZZA
NOTARY PUBLIC, State of New York
No. 30-4610011
Qualified in Nassau County
Commission Expires March 30, 1977

STATE OF NEW YORK)
 : SS.:
 COUNTY OF NASSAU)

LOU ANN TREZZA being duly sworn, deposes and says:
 deponent is not a party to the action, is over 18 years of age
 and resides at Massapequa, New York.

On January 4, 1977 deponent served the within notice
 of motion, affidavit and memorandum of law upon:

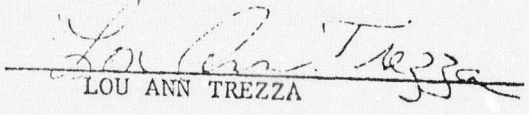
HONORABLE PAUL V. FRENCH
 United States Attorney for the
 Northern District of New York
 Federal Building
 Albany, New York 12207

ANTHONY V. LOMBARDINO, ESQ.
 Attorney for Kevin T. Cooney
 108-18 Queens Boulevard
 Forest Hills, New York 11375

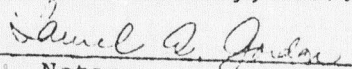
MELVIN M. LEBETKIN, ESQ.
 Attorney for Harold J. Levy, Jr.
 125-10 Queens Boulevard
 Kew Gardens, New York 11415

GABRIEL B. LEONE, ESQ.
 Nicolosi, Filardi, Robinson & Leone
 Attorneys for John LeFebvre
 39-07 Bell Boulevard
 Bayside, New York 11361

by depositing a true copy of same enclosed in a post-paid properly
 addressed wrapper in an official depository under the exclusive
 care and custody of the United States Postal Service within the
 State of New York.


 LOU ANN TREZZA

Sworn to before me this
 4th day of January, 1977.


 Notary

LAUREL A. GORDON
 Notary Public, State of New York
 No. 30-4293391
 Qualified in Nassau County
 Commission Expires March 30, 1977

Government's Memorandum in Opposition
to Appellant's Motion for a New Trial.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

MEMORANDUM OF LAW

KEVIN T. COONEY, HAROLD J. LEVY,
JR., JOHN LEFEBVRE and BRUCE KAY,

Cr. No. 76-CR-12

Defendants.

STATEMENT

This Memorandum of Law is submitted on behalf of the United States in response and opposition to the above named defendants' motion for a new trial.

On December 22, 1976, defendants Kevin T. Cooney, Harold J. Levy, Jr., John LeFebvre and Bruce Kay, were convicted after a jury trial of conspiracy to distribute quantities of marijuana. Defendants now move this Court for a new trial on the grounds that the verdict was not unanimous and the trial court coerced a guilty verdict from a reluctant juror.

ARGUMENT

POINT I

THE VERDICT OF GUILTY BY THE JURY SHOULD NOT BE SET ASIDE AND A NEW TRIAL ORDERED ON THE GROUNDS THAT (a) THERE WAS NOT UNANIMOUS CONCURRENCE IN THE VERDICT BY 12 JURORS, AND (b) THE COURT COERCED ONE JUROR INTO RENDERING A GUILTY VERDICT.

The central contention of the defendants centers upon the polling of juror number ten, Judith Earl. after a verdict of guilty was announced by the foreman in the instant case. After responding "guilty" to the poll conducted by the Clerk of the Court as to the first three named defendants, Miss Earl responded to the poll concerning Bruce Kay as follows: "I would like to say not sure but I say guilty because of the others- realizing that all- ... (page 10 transcript). A discussion ensued between the Court and Miss Earl.

At the outset, the government contends that the claims of defendants Cooney, Levy and LeFebvre are without foundation inasmuch as Miss Earl, upon being questioned by the Court and stating that there was no coercion placed upon her, further stated "I mean the only one I felt unsure of, having any doubt on, was the last defendant, was Bruce Kay," (page 13 transcript).

With respect to defendant Kay, the government asserts herein that Miss Earl's response to the poll of the jury did not constitute a dissenting vote but rather was an expression of reluctance in arriving at a difficult decision in which she finally joined. Once her expression of reluctance was brought to the attention of the Court, the trial judge exercised his discretion properly by attempting to assess the nature of her reluctance. It is well-settled that a trial judge has discretion in assessing the impact of the dissenting vote during the jury poll and that uncertainty in the first instance concerning a verdict does not require setting aside the trial if polling

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the jury can clear up apparent confusion. Williams v. United States, 136 U.S. App. D.C. 158, 419 F. 2d 740 (1969); United States v. Lockhart 366 F. Supp. 843, E.D.P.A., 1973). The main proscription contained in the rules concerning the trial court's questioning of a juror is that the court may not attempt to coerce a final verdict. United States v. Duke, 527 F. 2d 386 (5th Cir. 1976). The proceedings in the instant case clearly show that the trial court attempted to determine whether Miss Earl was coerced by other jurors into rendering the verdict of guilty, surrendering any of her personal convictions because of coercion by other jurors, and whether she finally reached a conclusion that she wanted reported in open court.

With respect to the first line of inquiry, Miss Earl stated (page 11, transcript) that although she felt pressure from other jurors, there was no coercion placed upon her to return a verdict of guilty (page 13, transcript). With respect to the second line of inquiry, Miss Earl made it clear that she finally reached a conclusion that she wanted reported and made a part of the verdict in this case. Specifically, the Court's attention is invited to the following exchange:

THE COURT: Miss Earl, I am going to ask you, particularly on this last call that we had: Did you surrender any convictions because of any pressures on you, or is that your judgment that you find that this defendant Kay is guilty? You have to use your own judgment.

JUROR NO. 10. JUDITH EARL: I definitely feel pressures.

THE COURT: What did you say?

JUROR NO. 10. JUDITH EARL: I definitely feel pressures.

THE COURT: I can't hear you

JUROR NO. 10 JUDITH EARL: I definitely feel pressure on this decision.

THE COURT: What kind of pressure? Did you listen to the opinions of the other jurors?

JUROR NO. 10, JUDITH EARL: Yes I have requested that we ask your Honor to review the legal advice or the legal charge that you gave us about the conspiracy relating to the part where they said that they would have to be involved in only a small portion of the conspiracy or not to be convicted--

THE COURT: Well, isn't that --

JUROR NO. 10. JUDITH EARL: I don't know.

THE COURT: Wasn't that made clear to you?

JUROR NO. 10. JUDITH EARL: The other point that I had some doubt on, and I am only saying this because of my reasonable doubt and I feel that it is reasonable. was the points that were made about Bruce Kay taking over the conspiracy, and I felt that I have reasonable doubt about that.

THE COURT: Well. I have to inquire. because we are in an awkward position: You were polled here and the question is, do you find Kay guilty under the law as I charged you and on the testimony given in this case.

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How old are you?

JUROR NO. 10. JUDITH EARL: 25.

THE COURT: And was any coercion placed upon you to return a verdict here?

JUROR NO. 10. JUDITH EARL: No. I don't -- I mean the only one I felt unsure of having any doubt on, was that last defendant, was Bruce Kay, and I have --

THE COURT: You may have felt, but did you finally reach a conclusion that you want reported and made part of the verdict in this case?

JUROR NO. 10, JUDITH EARL: Yes, I said that I do.

THE COURT: And you do that freely, and that is the point that we are trying to find out. Are you under any pressure? It is your judgment, your own mind has to make the decision.

JUROR NO. 10, JUDITH EARL: I concede that Bruce Kay is guilty.

THE COURT: Do you say he is guilty?

JUROR NO. 10, JUDITH EARL: Yes.

THE COURT: Now, I am going to take her verdict and her judgment.

Although the defendants contend that the Court's statement (p. 15 transcript) "you have two things, guilty or not guilty," gave Miss Earl the limited options condemned in Mathews v. United States 252 A. 2d 505 (D.C. App. 1969), it is clear that Miss Earl stated on the record her decision of guilty initially and then

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three times prior to the final exchange which is the subject of the defendant's attack. More importantly, the statement of Miss Earl indicates that while she had felt "unsure" in the jury room her decision regarding Bruce Kay was to join in the verdict of guilty. In this regard, the defendants' concession that Miss Earl was an intelligent, articulate and honest juror and, further, that the jury requested on several occasions the rereading of trial testimony concerning Bruce Kay, strengthens the proposition that Miss Earl did not surrender any personal convictions. If she felt pressure from other jurors it should be emphasized that, absent coercion, the views and persuasions of other jurors may legitimately change the views of a minority juror. As chief Judge Lumbard stated in Grace Lines, Inc. v. Motley, 439 F. 2d 1028 (2d Cir. 1971):

A system which requires the unanimous verdict of a jury of twelve can function satisfactorily in most cases only because most jurors are reasonable men and women and after a certain amount of discussion has produced a large majority in favor of one view, those in the minority may be willing to join the majority in the belief that if so many other reasonable people have a contrary view, the views of the minority may well be mistaken. Instructions to the jurors in both state and Federal Courts stress the importance of jurors listening to the views of one another and making allowance for the fact that there can be a reasonable difference of opinion. . . . Moreover, a reasonable juror knows that even though he may prefer to have the jury reach a different result, it is also important that it reach some result. Hence, he does not hesitate to reexamine his original views and to give up his opinion if convinced, by the fact that everyone else has contrary views, that his opinion is erroneous. He seeks primarily to agree upon a verdict so long as he can do so without violating his individual judgment and conscience. This common sense view of getting things decided usually prevails in all

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groups under circumstances in which there must be a free expression of opinion.

It is also important in the present case that Miss Earl did not state that she disagreed with the verdict but merely attempted to explain what had motivated her affirmative vote. See, for example Grace Lines. Supra. 439 F. 2d 1028, at 1031. The defendants also make much of the fact that the trial court failed to direct the jury to continue deliberating under the provisions of Rule 31. Federal Rules of Criminal Procedure. First, it is clear that further deliberations are within the discretion of the Court and that such deliberations may not be required when the trial judge attempts to obtain clarity from the juror rather than coerce a final verdict. Second, the defense attorneys made no motion to the trial court for return of the jury room for further deliberations, a fact or found to be of some significance in the Duke case, Supra. See also. Jackson v. United States 386 F. 2d 641, 128 U.S. App. D.C. 214. (1967).

Finally, it should be noted that in those cases where coercion by the trial court was found, the specific response of the reluctant juror indicated lack of unanimity. For example, in United States v. Edwards 469 F. 2d 1362 (5th Cir. 1972), the reluctant juror, in response to the poll, stated "it's my verdict but I am still in doubt". Without seeking a reasonable explanation of her statement the trial court proceeded to ask the juror whether that was her verdict. When the juror responded "Yes Sir," the court

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accepted the verdict without further discussion. In United States v. Sexton 456 F. 2d 961 (5th Cir. 1972), the reluctant juror stated that he did not vote either way. The Court asked the question. "was it your verdict?" to which the juror responded "Yes Sir." The appellate court found that the non-voting juror was required to vote publicly in open court rather than in the jury room, and, accordingly reversed the conviction. See also Jackson v. United States, Supra, and Williams v. United States, Supra.

ND
In the instant case, Miss Earl, (page 13, transcript), stated that she felt unsure of the guilt of Bruce Kay but that she finally reached a conclusion that she wanted reported and made a part of the verdict in this case. She then stated that she conceded that Bruce Kay is guilty, thereby indicating that she joined with the majority view.

POINT II

THERE IS NO RULE OF LAW PROHIBITING A JUROR FROM TAKING NOTES DURING TRIAL.

It is well settled that a juror may make notes during the course of a trial, U.S. v. Bertolotti, 529 F. 2d 149 (2d Cir. 1975). In the instant case, the defendants assert that notes taken by juror number one may have been used to taint the jury's verdict, if, in fact, the notes were discussed with other jurors prior to retirement for deliberation.

First, the government notes that at the outset of the trial the Court observed that juror number one, Mr. Charles Chow, was

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taking notes during the testimony of Robert Roth. At that time the court advised Mr. Chow that those notes were his own and that they could not be substituted or take precedence over independent memory of the facts in the case. At the time the court issued the instruction to Mr. Chow, no comment was made by any defense attorney concerning the propriety of taking said notes.

Second it is clear that Mr. Chow took notes to refresh only his own memory (page 16 transcript). Accordingly the government submits that the defendants' motion for a hearing to determine whether juror number one disclosed the contents of his notes to fellow jurors is without merit.

CONCLUSION

For the foregoing reasons the United States submits that the motions of the defendants Cooney, Levy, LeFebvre and Kay should be denied.

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Attorney for United States of
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Northern District of New York
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Albany, New York 12201

BY William J. Dreyer
William J. Dreyer
Assistant U.S. Attorney

EXCERPTS FROM ORAL ARGUMENT ON MOTION
FOR A NEW TRIAL

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA,

5 - against -

6 KEVIN T. COONEY, HAROLD J. LEVY,
7 JR., JOHN LefEBVRE and
8 BRUCE KAY,

9 Defendants.

76-CR-12

10 -----X
11
12
13 PROCEEDINGS in the above-entitled
14 matter came on before the United States District
15 Court, Northern District of New York, at Albany,
16 New York, on January 26, 1977, before the Honorable
17 James T. Foley, United States District Judge.
18
19
20
21
22
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25

1 been my purpose in conducting the inquiry.

2 THE COURT: Now, did you interview her,
3 Mr. Ryan?

4 MR. RYAN: Yes.

5 THE COURT: You wanted to make sure?

6 MR. RYAN: No, you didn't restrict me.

7 I got back to my office, the following week I telephoned
8 her. As a matter of fact, I didn't telephone, I wrote
9 her a letter and I advised her of her right as a juror
10 not to discuss anything with me. It is an absolute
11 right she has. I also pointed out to her that she has
12 the right also to discuss the facts with me and I pointed
13 out to her I informed Judge Foley that I intended to inter-
14 view her and Judge Foley consented attempting to inter-
15 view. I will make it part of the record. I will let
16 this woman know she had a right, an absolute right and I
17 wasn't going to hold it against her, so I talked to her
18 on the telephone. She called me collect from Lake George.
19 Now, I told this woman that she has the right, I reminded
20 her of the right, and I said if you feel uneasy about
21 it, I will tell you right now I will make a pledge of
22 secrecy; the conversation between us shall remain
23 absolutely confidential and this eased her considerably.
24 And, she gave me some very frank reservations, and I told
25

1 her that I don't want to call her on any hearing. I don't
2 want to get her involved anymore. I want to wait for
3 the transcript, and I got the transcript, and I sent her
4 the transcript, and she read the transcript, and then I
5 went over it; I had a draft of the affidavit that I have
6 submitted to this Court, and she called me again in
7 response to my letter. I forwarded the transcript and
8 asked her to give me a ring for the clarification of
9 what took place, what took place in the transcript.

10 I read to her my affidavit recounting the events as I
11 have tried to recount them to Your Honor and I read her
12 the affidavit and she said to me, Judge, as we went
13 down the affidavit paragraph by paragraph that you have
14 accurately, correctly and fairly represented my state of
15 mind, the circumstances under which I found myself. I
16 felt I had no alternative. In other words, she didn't
17 know Your Honor could say, well ladies and gentlemen, I'm
18 not going to accept your verdict; I want you to go home,
19 get some sleep, come back tomorrow, back to the jury-
20 room, whichever way you wanted. She didn't realize
21 that could be done.

22 THE COURT: I did offer that about
23 9 o'clock.

24 MR. RYAN: You did. Mr. Chow said no.

1 We will retire. We will continue further deliberation--
2 you are absolutely right, and about the extent that I am
3 authorized to tell you, Judge, I read the affidavit to
4 her. I have no objection to Mr. Dreyer or anyone from
5 the Government calling her up and going over the facts
6 and circumstances laid out in my affidavit, and asking
7 her if that is an accurate reflection of what you under-
8 went during the polling process. I have no objection to
9 that whatsoever, and I am confident she is not going to
10 give any answer contrary to what she gave me, but I
11 wanted to stay away Judge from getting a juror more
12 involved than necessary. If I have a transcript here
13 which I think accurately supports the interpretation
14 that we have suggested to this Court about the influences
15 she underwent in rendering her verdict, I am reluctant
16 and I see no need to have this woman come in and sign
17 affidavits or give statements to the Court, and I am
18 strongly reluctant to courts having jurors come in and
19 impeach their own verdict --I'm not interested in that
20 all I'm interested in is demonstrating to your Honor
21 that Your Honor, the undisputed facts in this case,
22 as a matter of law, her verdict is the product of
23 coercive influences both in the jury room when she
24 said 11 others against me. I definitely felt I had no alter-
25 native. The refusal to hear Your Honor's charge further and

1 circumstances underwhich the intergation was conducted
2 in the Courtroom. Now, I'm not saying that Your Honor
3 wanted to hammer jack her into a verdict or anything
4 like that. Nor improper motive or anything of that
5 kind. It was a pressing and a very tense moment after a
6 very lengthy trial. Your Honor properly sought to
7 clarify the facts. The more you sought to clarify the
8 facts the more it came clear from her that she had a
9 reasonable doubt and was simply accommodating by voting
10 guilty, and the Government's interpretation of these
11 exchanges and in this record that this is a woman who
12 wanted to vote guilty, but was reluctant--a woman
13 convinced beyond a reasonable doubt of the defendant's
14 guilt, and for that reason voted guilty cannot be
15 supported in any court in my judgment on this record and
16 for those reasons, Judge, I respectfully submit and
17 the Edwards case was a case--the Government cited in their
18 brief. I think, Your Honor, considered it or will
19 consider a very similar situation, and under all these
20 facts and circumstances in the interest of justice that
21 the Court should grant our motion for a new trial.

22 THE COURT: All right. Mr. Dreyer.

23 MR. RYAN: I have obtained yesterday a
24 New York Court of Appeals, People against Carter, a
25

District Court Memorandum and Order Denying
Motion for a New Trial.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

76-CR-12

KEVIN T. COONEY, HAROLD J. LEVY, JR.,
CHRISTINE H. COONEY, SANDRA BROOKS, a/k/a
SANDRA BROOKS LEVY, WILLIAM KATZ, JOHN
LE FEBVRE, ELLEN KAPLAN, SANDRA L. HUNT,
MARC COHEN, BRUCE KAY, CURTIS PONZI, JOHN
TIBBETTS, MICHAEL P. HAUSER, RALPH CLICK,
ROBERT ROTH, MICHELLE KOVEN, and CATHI A.
HESSION

APPEARANCES:

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JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

The indictment herein in Count I charged seventeen named persons with conspiracy to distribute quantities of marijuana in violation of Title 21 United States Code, Section 841(a)(1). Of the seventeen named, four defendants, Cooney, Levy, LeFebvre and Kay went to jury trial on Count I.

The case was submitted to the jury on December 22, 1976, after the instructions ended at 11:05 a.m. Their deliberations continued

throughout the day and a verdict of guilty for the four defendants was returned at 11:35 p.m. that night. During the individual polling of the jury, there was a comment by Juror No. 10, Mrs. Judith Earl, concerning her state of mind of the guilt of defendant Kay, and also there developed during this individual polling, comments concerning the taking of notes during the trial by Juror No. 1, Charles Chow, and the use of his personal handwritten notes during the jury deliberations. After these incidents and interrogation by me of the two jurors about them, I allowed and directed the verdicts of guilty to stand and to be so recorded. Immediately thereafter, at my request, motions by the defense attorneys were made on behalf of each defendant to set aside the verdicts and for entry of judgment of acquittal, but denied from the Bench. Fed. R. Crim. P. 29(c).

To be discussed herein and decided are now present two formal, written motions to set aside the verdicts and grant a new trial under Fed. R. Crim. P. 33. One motion is in behalf of defendant Kay, based upon the comments of Juror Earl in regard to her verdict of guilty of Bruce Kay when polled individually; and the other motion is jointly for the other three defendants, requesting the verdicts to be set aside and for a new trial based upon the same question, and also upon the note-taking by Juror Chow. In the submissions on the motions, the attorneys had a transcript made that covers the incidents only from the time request was made for individual polling of the jury after the verdicts of guilty of the four defendants had been read by the Foreman for each one in open court, with the clerk in each instance inquiring collectively, "And so say you all." For purposes of this discussion, I have had transcribed and shall file with the Clerk of the Court, the minutes that cover the objections and discussion after my instructions, the caution to Juror Chow early in the trial on December 2, 1976, by me, in the presence of all other jurors in the jury box about note-taking, and the statements

and comments made when the jurors returned to open court for reading of testimony on a substantial number of occasions. These minutes to my mind are very pertinent and illuminating on the questions presented.

Each defendant was individually represented by experienced counsel who were vigorous in their advocacy; several being relentless in their prolonged and pounding cross-examination of government witnesses. I allowed extensive cross-examination of the government witnesses because it was evident and agreed that credibility of these witnesses, being in the category of accomplices for the most part, was an important issue in the case. Of the other named defendants in the indictment, several had dismissals or received extremely light sentences under 21 U.S.C. §841(b) and provisions of the Youth Corrections Act. There was no question in my mind that unrestricted cross-examination should be allowed to fully develop for the defense, and for careful jury consideration, any interest or treatment of these accomplice witnesses in relation to possible motivation for such witnesses to falsify their testimony. The trial lasted for approximately three weeks and, as previously noted, on the night of the first day of their deliberation, the jury returned their verdicts literally at the eleventh hour of that day, 11:35 p.m., December 22, 1976.

Following the usual procedure, the verdicts of the jury, covering each defendant separately, were requested by the courtroom Deputy Clerk, and upon the clerk's requesting the verdict for each defendant after naming him, Foreman Chow, reading from a note, announced guilty until all four defendants by separate requests by the clerk for each defendant were covered. There was no disagreement orally with each announcement of the verdict of guilty nor any outward sign of any disagreement by any juror in the jury box. All defense counsel then requested individual polling of the jury pursuant to Fed. R. Crim. P. 31(d).

In the polling for each of the four defendants, in the order agreed upon by all counsel, guilty responses were given by all jurors for three defendants, LeFebvre, Levy and Cooney, until comment was made by Juror No. 10, Mrs. Judith Earl, in polling her individually, in regard to her verdict concerning the guilt of defendant Kay. It was then in this last polling concerning defendant Kay, that she made the response that caused further inquiry by me as to her state of mind concerning the guilt of defendant Kay, and to find out in view of her comments whether the verdict should be accepted and recorded as a unanimous verdict of the twelve jurors required to find defendant Kay guilty as charged. Her first response to the poll by the courtroom Deputy Clerk with regard to defendant Kay was:

I would like to say not sure, but I say guilty because of the others -- realizing that all --

Proceeding of December 22, 1976 at 11:35 p.m., at p. 10.

This comment, and the colloquy which I found it necessary to pursue thereafter, has spawned the two separate motions to be discussed herein. It should be noted again that defendant Kay, in his motion, relies solely upon this incident that happened with Juror No. 10, while the other three defendants not only rely upon this question, but further rely upon alleged impropriety in the note-taking by Juror Chow and the use of such notes during the jury deliberations. Both of the instant motions, pursuant to Fed. R. Crim. P. 33, consist of the notice of motion, a single affidavit of counsel, a legal memorandum and the selectively limited transcript of the jury polling. Counsel for defendant Kay applied for, was granted and gave oral argument on January 26, 1977, but the joint motion on behalf of the other three defendants was simply submitted for decision on the papers.

By characterizing Juror No. 10, Judith Earl, in one submission on his motion as "not a confused juror . . . [but rather] an active juror . . . [who] expressed herself clearly . . ." [Defendant Kay's

Memorandum of Law, filed January 10, 1977] and in another as "a frightened, scared woman" [Affidavit of Counsel, attached to Notice of Motion, filed January 10, 1977], counsel for defendant Kay contends that her comments must be considered as expressions of reasonable doubt as to Kay's guilt which, it is argued respectfully, she was coerced into by pressures from the Court's questioning and by the presence of the other members in the jury box. Also, it is suggested that she was personally fatigued from the late hour of the proceedings at the time the verdict was taken in open court after the day long deliberations.

Defendants Cooney, Levy and LeFebvre view the comments and answers by Juror No. 10 to my questions as indicating her general confusion concerning the conspiracy portions of the jury charge. None of the counsel for these defendants made any specific objection to the charge in this respect. They also contend, in argument which is difficult for me to accept, that Juror No. 10's equivocation as to the guilt of defendant Kay should be read to undermine her unequivocal vote of guilty on the verdicts rendered against defendants Cooney, Levy and LeFebvre whom they represented. The argument seems to be one that could only be based upon a theory of osmosis because to me the doubt that she willingly expressed about Kay, I believe reinforces the conclusion that she had no doubt of the guilt of the other three defendants. Additionally, although attorneys for these defendants did not object to my allowance of jury note-taking with my cautions, particularly to Juror No. 1, Mr. Chow, who was selected as Foreman and whose note-taking was visible to all, they now contend that a post-verdict hearing should be held to determine if the Foreman made improper use of his personal notes during the jury deliberations. Counsel for defendant Kay, as pointed out in his motion, does not raise this issue in any way in his separate motion for a new trial and, indeed, stated at his oral argument that this note-taking was discretionary with the Court under ruling of the Court of

Appeals, Second Circuit.

Blackstone said that trial by jury is the glory of the law. The jury system has been long accepted as the best way, unless waived, to dispense justice fairly in the American system of justice. This jury deliberation process by laymen is particularly important and desired in criminal prosecutions. The responsibility of determining guilt or innocence, always a difficult assignment, is placed on ordinary citizens who must grapple with complex legal principles and reconstruct facts and search for the truth from evaluation of the testimony of many witnesses with the right to decide the part that should be accepted as reliable and supported by credible evidence. Of course, the most serious aspect of this process is when the twelve individual persons must deliberate for the first time as a group and must then speak with one voice. The give and take and the compromise in jury deliberations which such a process necessarily involves was well described by [former] Chief Judge Lumbard in Grace Lines, Inc. v. Motley, 439 F.2d 1028, 1033 (2d Cir. 1971) (concurring opinion). His common sense view of the jury functioning as a reasonable group of men and women who are willing to change their views is the only way such a decision making process could work effectively. The judge described succinctly what jury deliberation is all about.

After duly inquiring as to the meaning and import of this comment by Juror No. 10, and after having observed her other behavior during the course of the trial and jury deliberations, it is my firm judgment that there is no reason to doubt that she intended to and did record a guilty verdict with respect to defendant Kay which was voluntary and free from coercion and from reasonable doubt. See United States v. Brooks, 420 F.2d 1350, 1351 (D.C. Cir. 1969). Based on this finding, there could be no basis for any inference of confusion regarding Juror's No. 10 unequivocal vote of guilty on the verdicts against Cooney, Levy and LeFebvre.

The occurrence where a juror does not express her vote in precise legal parlance or in the form requested by the courtroom clerk during polling is not unknown in the federal courts. Similar incidents have been presented to the various courts of appeals for review and their decisions can be divided into two categories where the intent and result of the trial judge's colloquy was to clarify or to translate the express vote of a juror into non-ambiguous legal terms and the other category where colloquy is deemed coercive or was done in such fashion to cause the hesitant juror to actually vote in open court. Amos v. United States, 496 F.2d 1269, 1273 (8th Cir. 1974), cert. den. 419 U.S. 896 (1974).

The situation which developed here in the colloquy with Juror No. 10 bears, in my opinion, after review of the transcript, no resemblance to those cases which defendants rely upon as indicating coercion. To my mind, after my questioning at the actual scene, I was satisfied from her answers that Juror No. 10, Mrs. Judith Earl, had reached a guilty verdict as was indicated by no disagreement on her part orally or by physical demonstration when the verdict was taken collectively and read out by the Foreman of the jury. It was evident from the manner in which the jury came into the courtroom after informing the Deputy Marshal they had reached a verdict on all defendants that the guilty verdict of defendant Kay was not one formed in open court by Juror No. 10 nor a forced one, compelled to be given for the first time in open court, see United States v. Sexton, 456 F.2d 961 (5th Cir. 1972); nor was this a situation where a juror was given the sole alternative of voting "yes" or "no" without allowing full expression, explanation or further qualification of their vote. See United States v. McCoy, 429 F.2d 739 (D.C. Cir. 1970). There is unquestionably an affirmative obligation on the trial court to clear up any apparent confusion in instances of this kind and to determine a juror's vote or expressions in a poll when it is not articulated in "the precise forms submitted to it under

court's instructions", or when it is not strictly in the parlance of the courtroom. See Cook v. United States, 379 F.2d 966, 971 (5th Cir. 1967). There is no verdict if there is any uncertainty concerning unanimity of the twelve, and it has been held as error for a trial court to ignore, prohibit, or fail to clarify such expressions made by jurors during the polling procedure. United States v. Edwards, 496 F.2d 1362; see Rogers v. United States, 422 U.S. 35 (1975); Jones v. Estelle, 538 F.2d 651 (5th Cir. 1976) (per curiam); United States v. Mathis, 535 F.2d 1303, 1307 (D.C. Cir. 1976); 8A Moore's Federal Practice - Criminal Rules ¶31.07. The court in Edwards remarked, along lines similar to Chief Judge Lumbard's view, that:

Jurors are laymen, unskilled in the fine distinctions of the law. When a juror states that he has doubts, the trial judge should be alerted to the probability that there may not be unanimity in the verdict.
Id., 496 F.2d at 1367.

When a response to a jury poll is given as guilty with qualification, the trial judge is put in the delicate position of determining whether the vote is in reality one of guilty with a level of certainty as required beyond a reasonable doubt or whether it is something less certain which requires further deliberations by the jury pursuant to Fed. R. Crim. Pro. 31(d). This task must be accomplished without delving too deeply into the motivation and rationale for the vote. United States v. Lockhart, 366 F. Supp. 843, 849 (E.D. Pa. 1973), affirmed without opinion, 495 F.2d 1369 (3rd Cir. 1974). There are three areas of determination in such an event: First, was the juror's vote truly his own and free from any coercion? United States v. Duke, 527 F.2d 386, 394 (5th Cir. 1976), cert. denied, ____ U.S. ____, 44 U.S. Law Week 3738 (June 21, 1976); Jackson v. United States, 386 F.2d 641 (D.C. Cir. 1967) (per curiam). Secondly, the court must determine whether there is any confusion about the court procedure in fully understanding the charge, the polling procedure of the jury

or the meaning of the juror's response. United States v. Brooks, supra, 420 F.2d at 1351; Williams and Coleman v. United States, 419 F.2d 740 (D.C. Cir. 1969) (en banc). Finally, it must be determined whether the vote itself is for guilt beyond a reasonable doubt, or whether the juror's expressions indicated a lesser degree of certainty which necessitates further jury deliberations under Fed. R. Crim. Pro. 31(d).

As the record shows, after the culmination of my direct questioning, in my judgment, Juror No. 10 expressly indicated overall, conclusively and finally, that her vote on defendant Kay was for guilty beyond a reasonable doubt and that it was her own vote -- free from any coercion. It is also important that Juror No. 10, to my observation was an attentive and an active member of the jury. She requested on her own upon the return to the jury box of the jury that certain portions of testimony be re-read and thereafter expressed satisfaction with the re-reading. Transcript of Jury Deliberations, December 22, 1976, at pp. 33, 35 and 54. It is inappropriate to speculate as to her views during the course of deliberations except to acknowledge that even if, arguendo, she joined the majority on the jury later on in the deliberations or for purposes of unanimity and rendering a verdict, this is neither improper or even abnormal. See Grace Lines, Inc. v. Motley, supra; Cook v. United States, supra.

As noted before, this trial was quite lengthy and the attorneys, prosecution and defense, proceeded with vigor and strong advocacy, yet absolute courtesy to each other and to the Court, and decorum prevailed at all times. The record and the minutes of the courtroom clerk show that the jury actually deliberated in their jury room for a relatively short period of time and exhibited to my on-the-scene observation no signs of animosity, hostility or impatience with each other upon their substantial number of returns to the courtroom. In fact, their attitude was one of friendliness and respect to each other with evident determination to render final decision in the

case that night, despite my express offer to terminate their deliberations and to return the following morning to continue.

Counsel for defendant Kay requested an opportunity to interrogate the jury before they were excused, which request was denied at that time. Transcript of Proceeding at 11:35 p.m., supra, pp. 31-32. Upon his oral argument of this Rule 33 motion, counsel as I recall after he searched the pertinent case law commendably conceded he had no right legally to so question the jury during the polling. See Miller v. United States, 403 F.2d 77, 83-84 (2d Cir. 1968); cf. Bruce v. Chestnut Farms-Chase Dairy, 126 F.2d 224, 225 (D.C. Cir. 1942); Curry v. Moore 1 Armick Lines, Inc., 51 F.R.D. 301, 303 (S.D.N.Y. 1970). There was no request or motion made by any attorney for direction to have the jury deliberate further before the jury was finally excused. See Jackson v. United States, supra, 386 F.2d at 643; see also United States v. Duke, supra, 527 F.2d at 394; Amos v. United States, supra, 496 F.2d at 1273; United States v. McCoy, supra, 429 F.2d at 742. The failure to so move during the trial is not considered a necessary factor in denying these motions since it is my judgment as the trial judge who participated actively, there is no merit to defendants' contention that Juror No. 10 did not render an uncoerced vote of guilty upon the indictments of all four defendants, including defendant Kay or that her votes were not based on understanding of the instructions or should be considered as other than ones made of her own volition. From my observations, there was no disagreement by any outward manifestation by any juror in the jury box when Foreman Chow announced the verdicts of guilty for each defendant before the individual polling was conducted. In light of my determination that defendant Kay suffered no prejudice during the polling procedure and that the verdict of guilty should stand as a unanimous one against Kay, it follows unquestionably that the verdicts against Cooney, Levy and LeFebvre, in which there was no hesitation by any juror in

the individual polling, must stand and the motions in their behalf based on this ground also be denied.

These three defendants, excepting defendant Kay, do present the alternate ground for a new trial based on the allegation that Mr. Chow, selected by the jurors under our system as the Foreman, did make or might have made improper use of his notes and the Court should, at the least, have conducted a hearing to determine whether such improper use during jury deliberation was made of these personal notes. It should be emphasized again that defendant Kay makes no claims on this challenge to the note-taking, admittedly discretionary in the Second Circuit. See United States v. Bertolotti, 529 F.2d 149, 159-60 (2d Cir. 1975).

As I commented to the attorneys after the jury was excused, I considered Mr. Chow to be "one of the most exceptional jurors that we have ever had . . ." Transcript of Proceeding at 11:35 p.m., December 22, 1976, supra, at pp. 36-37. In regard to his note-taking, no objection was made when I first observed it to my granting permission to take notes or to my cautionary instructions given at that time. See Transcript of Proceedings on December 2, 1976. There were objections made by defense counsel after the verdict which amounted to a contention that whenever a juror takes notes, the court should conduct a hearing pro forma, to investigate their use. I did have the juror back to the jury room and obtain the notes available, and these notes were marked into the record as a court exhibit. The notes as I read them are cryptic, with summaries of witnesses' testimony, with no comments about evaluation of the truth or worth of such testimony. There is nothing shown in the record or elicited by my questioning that would support any suspicion that Foreman Chow made improper use of his personal notes that were made during recesses or after court sessions. See Transcript of Proceedings of 11:35 p.m., December 22, 1976, supra, at pp. 15-24. I have filed as stated those portions of his notes which were available as Court

Exhibit No. 10, and have reviewed them myself. To describe them again: They are simply a cryptic chronicle of the times the various witnesses testified and the briefest description without conclusions drawn of the highlights of their testimony. Since the trial covered a three-week period with interruptions that occurred due to other responsibilities of the Court, with a large number of witnesses examined and cross-examined, I find no basis to suggest that either the note-taking by this exceptionally intelligent juror or their use to refresh his memory of the testimony was improper.

Finally, I find no merit to the suggestion that the lateness of the hour or the day long deliberations with the incidents described in the individual polling amounted to serious problems that should warrant the setting aside of the verdict and the granting of a new trial. Careful inquiries were made of the jury concerning their ability and desire to continue deliberations at 9:45 p.m. [Transcript of Jury Deliberations of December 22, 1976 at pp. 39-48] and at 10:40 p.m. [Id., at pp. 48-55]. The jury stated through its Foreman, after he looked at the others in the jury box for their state of mind, that the jury wished and were willing to continue their jury deliberations. It is important to point out, in my judgment, as the presiding judge on the scene, that the jury deliberations were as uneventful and dispassionate as I have ever observed at the conclusion of a long criminal jury trial. There was no thought of giving a modified Allen charge, which is the only one I give when necessary, because really with all the time consumed in reading substantial amounts of testimony and the departure of the jury from the building for an hour and a half or more to have dinner at one of Albany's finest restaurants, located just across the street, the deliberations cannot be considered as prolonged ones which would bear down or tax the stamina of the jury to such an extent as to overcome their independent convictions as to the guilt of these defendants.

There was no indication to me or observation at the actual

trial scene that we had a weary and tired jury which was unduly and unfairly pressed to agree to a verdict after an exhausting day, as the counsel for defendant Kay attempts to portray. This beleaguered jury picture, painted by defense counsel, simply was not the fact as the record of jury deliberations, their return into the courtroom on several occasions, and their unanimous agreement to continue indicates. The jury had their lunch arranged for them to eat shortly after my instructions ended at 11:05 a.m. The jury came back a number of times during the day after notes were given to the Deputy Marshal for the Court which notes contained precise and pointed questions therein concerning parts of the testimony the jury desired to read. The notes are part of the record. Significant time was also consumed for the attorneys and court reporters to agree on the portions of the testimony to be re-read. There were no requests for any clarification of the instructions that were given or any such indication in the notes when the jurors returned to open court that the jury wanted the Court to give further clarification of the instructions.

No matter the attempt to dramatize a slight ripple in an otherwise uneventful trial and jury deliberation into an incident of utmost gravity and seriousness, it must be remembered that the jury returned its verdict at 11:35 p.m. of the same day. The entire incidents of polling the jury individually after the collective agreement on guilty verdicts, the subsequent questioning of jurors Earl and Chow by the Court, the hearing of motions for each defendant to set aside the verdicts, according to the courtroom Deputy Clerk's minutes [filed with this decision] was over by 12:15 a.m.; surely not an inordinate amount of time. The questioning of both jurors could not have exceeded a 15 to 20 minute period at the most. It should be said that there was no handwringing or sobbing on the part of Juror Earl after she expressed her doubt, in a soft spoken manner, about the guilt of Kay; there was no emotional scene at all. To my

observation, she was only stating, in her own way, the difficulties she had to overcome and that were on her mind in order to resolve the doubts and agree with the other jurors concerning defendant Kay. Unless it was completely out of character, at least as observers have described, in the past, my courtroom attitude and manner as a trial judge, there was no intent on my part by the content of my questions or the tone of delivery to coerce or pressure in any way Juror Earl from expressing the verdict she wanted to render. Of course, it is self-serving, but my interpretation of the transcript is that she voluntarily and without coercion expressed joinder in the verdict of guilty against defendant Kay.

In conclusion, the two separate motions for a new trial, on behalf of defendant Kay and jointly on behalf of defendants Cooney, Levy and LeFebvre, under Fed. R. Crim. Pro. 33, for a new trial are denied and dismissed. The verdicts of guilty shall stand against all defendants and the sentencing scheduled for Tuesday, February 22, 1977, shall take place.

It is so Ordered.

Dated: February 15, 1977

Albany, New York

Edward T. Leiby
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
For the Second Circuit

United States of America, Appellee,
against
Bruce Kay, Appellant

State of New York, County of New York, ss.:

Bernard S. Greenberg, being duly sworn deposes and says that he is
agent for Joseph W. Ryan, Jr., the attorney
for the above named Appellant herein. That he is over
21 years of age, is not a party to the action and resides at
162 East Seventh Street, New York, N.Y.
That on the 1st day of May, 1978, he served the within
Appendix and the Brief of Appellant

upon the attorneys for the parties and at the addresses as specified below

Paul V. French, United States Attorney,
Northern District of New York
United States Courthouse and Post Office
Albany, New York 11201

by depositing two copies appendix and two copies brief of
Appellant
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly main-
tained by the United States Government at
90 Church Street, New York, New York
directed to the said attorneys for the parties as listed above at the addresses aforementioned,
that being the addresses within the state designated by them for that purpose, or the places
where they then kept offices between which places there then was and now is a regular com-
munication by mail.

Sworn to before me, this 1st

day of May, 1978

Roland W. Johnson
ROLAND W. JOHNSON,

Notary Public, State of New York
No. 4509705

Qualified in Delaware County
Commission Expires March 30, 1979

Bernard S. Greenberg